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Supreme Court, U.S.
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No. _____

In The
Supreme Court Of The United States

OCTOBER TERM, 1986

GEORGE VAKALIS,
Petitioner,

v.

EUGENE M. KAGAN, JACK HEFLIN, ALLEN M. HEFLIN, COUNTRY CLUB ASSOCIATES, EAST STREET MALL ASSOCIATES, E. REUEL STOLTZ, CPA, SPITZ, SULLIVAN, WACHTEL & FALCETTA, INTERSTATE REGIONAL SHOPPING CENTERS, LTD., BERTRAM ROBINSON, HARLAND SHAPIRO, VSR ASSOCIATES, ELAINE G. KAGAN,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED

I. Whether the Second Circuit Court of Appeals erred in using the discovery principles under the common law doctrine of fraud, in applying the statute of limitations, to the partial discovery of the conspirators' initial agreements to participate in the first criminal scheme in a pattern of ongoing and continuous racketeering activity, to vitiate Congress' expressed intent and purpose in allowing a ten year period of time under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Section 1961 (5), in which a victim/future plaintiff may investigate the existence of one or more racketeering schemes to determine the viability of a violation under 18 U.S.C. Section 1961 *et seq.* and institute an action after the point of accrual, but within the proper statute of limitations period.

II. Whether the Second Circuit Court of Appeals erred in applying only a portion of the law regarding the Connecticut statute of limitations to a lawsuit brought under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Section 1961 *et seq.*, to bar the action, filed by a pro se plaintiff within the ten year period of time provided by 18 U.S.C. Section 1961 (5), when in fact there was no last predicate act, but rather conspiracy agreements with a continuing course of racketeering conduct, which tolls the running of the limitations period under settled Connecticut law and the federal equitable tolling doctrine.

III. Whether the Second Circuit Court of Appeals erred in refusing to apply the proper Connecticut statute of limitations, i.e., that for partnerships, when the majority of defendants in this action were business partners of the plaintiff and thereby in a fiduciary relationship with him, removing the element of surprise and mandating the application of the longer Statute of Limitations period.

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To The Honorable, The Chief Justice and Associate Justices Of The Supreme Court of The United States:

The petitioner respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Second Circuit Court of Appeals, entered in this proceeding on October 10, 1986.

OPINIONS OF THE COURT BELOW

The Opinion of the Court of Appeals is unreported and is set forth in full in the Appendix, pp. 1A to 3A.

The Opinion of the District Court is unreported and is set forth in full in the Appendix, pp. 4A to 11A.

JURISDICTIONAL STATEMENT

The judgment of the Court of Appeals was entered on October 10, 1986. The jurisdiction of this Court for review of this matter by certiorari is conferred on this Court by 28 U.S.C. Section 1254(1).

STATUTORY PROVISIONS

The relevant statutory provisions involved in this case include the Racketeer and Influenced and Corrupt Organizations Act, 18 U.S.C. Section 1961 *et seq.*, and Connecticut General Statutes Sections 52-576 and 52-577.

STATEMENT OF THE CASE

On July 17, 1985, the pro se plaintiff, now petitioner, filed a lengthy complaint involving a federal civil claim pursuant to 18 U.S.C. Section 1961 *et seq.* (hereinafter referred to as "RICO") alleging a criminal conspiracy to destroy him and his business, masterminded and directed by his trusted attorney and partner, defendant Eugene M. Kagan, coupled with various state law claims of common law fraud, fraudulent concealment, negligent misrepresentation, breach of contract and conversion, by seeking thirty-five million dollars in damages, among other requested relief.

On August 26, 1985 a Motion To Dismiss With Memorandum was filed by defendant Eugene M. Kagan, Jack Heflin, Allen M. Heflin, Elaine Kagan, and Country Club Associates.

On September 16, 1985, a Motion To Dismiss With Memorandum was filed by defendant Harland Shapiro.

On September 16, 1985, a hearing was held before United States District Judge Clarie on said defendants' Motion To Dismiss.

On October 21, 1985, a hearing was held on defendant Shapiro's Motion To Dismiss and other defendants' Bond Motions.

On October 23, 1985, the defendant East Street Mall filed a Motion To Dismiss With Memorandum.

On December 9, 1985, a hearing was held on plaintiff's Motion To Amend Complaint to add additional defendants among other motions.

On September 16, 20, October 18, November 15, and December 10, 1985, the plaintiff filed Memorandums In Opposition To The Motions To Dismiss.

On April 11, 1986, the Appearance of Joseph P. Secola for the plaintiff was filed.

On April 16, 1986, the "Rulings On Motions To Dismiss" was filed, which dismissed the Complaint. No discovery by any party had been conducted at this point.

On April 16, 1986, the plaintiff filed a Motion For Extension Of Time to file a brief regarding the plaintiff's previous Motion to add additional party defendants.

On April 21, 1986, judgment was entered in favor of all defendants.

On May 16, 1986, at 10:52 AM the plaintiff filed a Motion For Leave and Motion For Reconsideration Of The "Ruling On Motions To Dismiss."

On May 16, 1986, at 12:17 PM the plaintiff's said Motions For Leave And Reconsideration were denied.

On May 16, 1986, the plaintiff filed his Notice of Appeal from the said orders regarding the "Rulings On Motion To Dismiss," the plaintiff's Motion For Leave and the plaintiff's Motion For Reconsideration.

On October 9, 1986, the plaintiff and defendants, then appellant and appellees argued the appeal before the Second Circuit Court of Appeals.

On October 10, 1986, the Second Circuit Court of Appeals entered a final decision on the appeal in favor of the defendants. It is to be noted that the Second Circuit decision wrongly categorized the lower district court decision as a Ruling on a Summary Judgment Motion, when in fact, the district court ruled on various Motions to Dismiss made pursuant to Federal Rules of Civil Procedure 12(b)(6).

FACTS

The petitioner is a commercial real estate developer who has been defrauded by an extensive pattern of multiple schemes of racketeering activity, out of substantial monies and properties through five partnership enterprises in violation of a number of federal criminal statutes. These partnership entities include Interstate Regional Shopping Centers, East Street Mall Associates, Country Club Associates, VSR Associates (VSR stands for Vakalis, Shapiro and Robinson), and Rockingham Mall.

The various respondents are his partners, his accountant, his attorney, and the five partnership enterprises. The petitioner alleged in his complaint numerous predicate acts and conspiracy agreements occurring between 1977 and continuing and extending up until the present day, as he is presently still being deprived of his monies and properties in the said partnerships. The various respondents have violated various federal criminal statutes of extortion and fraud which form the basis of a civil RICO claim. The petitioner has also sued under state law for common law fraud, fraudulent concealment, negligent misrepresentation, breach of contract and conversion. The respondents to this day are in continual breach of the fiduciary duty that they owe the petitioner. The petitioner has sufficiently plead a RICO cause of action with the required predicate acts, pattern of racketeering activity, and enterprises. The petitioner deserves to have the merits of his case set before a trier of fact: a jury of his peers.

The basis for federal jurisdiction in the original complaint is found under 18 U.S.C. Sections 1964 and 1965.

REASONS FOR GRANTING THIS WRIT OF CERTIORARI

SUMMARY ARGUMENT

Pursuant to Rule 17.1(c) of the Rules of the Supreme Court, the Court should grant this petition and review this case to settle an important question of federal law presently in confusion among the Federal District Courts throughout the Circuits.

In addition to the specific merits of this case, the Court needs to address, for the purposes of formulating a consistent national judicial policy, the crucial issues of (1) when a RICO cause of action accrues thereby starting the appropriate state statute of limitations running against the racketeering victim/future plaintiff and (2) which state statute of limitations is most appropriate to a RICO cause of action.

This case is of great national social concern, as it deals with the pandemic of organized white collar crime rings of professionals in which attorneys and accountants betray their own clients for their own selfish pecuniary gain through various criminal schemes of embezzlement, extortion and fraud. It is this very national problem which Congress sought to redress by the civil provisions of the RICO statute in 1970. Unfortunately, lower courts, lead by the Second Circuit again, are creating judicial barriers to meritorious RICO claims, not of the garden variety kind, in direct disobedience to the mandate of Congress and of this Court in *Sedima, S.P.R.I. v. Imrex Company, Inc.*, ____U.S.____, 105 S.Ct. 3275, 87 L.Ed. 2d 346 (1985).

I.

In applying the state statute of limitations, the Second Circuit Court of Appeals confused the principle of discovery contained within the common law doctrine of fraud, with the time for investigation, discovery and accrual provided in the RICO statute for a RICO cause of action. A common law

concept regulating the point in time at which a limitations period is to be applied and begin to run should not be used to vitiate the time period that Congress has already specifically set forth in the statute for the investigation of possible RICO violations. By this time period, Congress delayed the accrual time of a RICO cause of action for as much of this period as is necessary to allow for this very investigation of the pattern of racketeering activity. This misapplication prevents the institution and maintenance of complex RICO actions, which in reality are timely filed and meritorious.

II.

To dismiss a valid RICO lawsuit, the Second Circuit Court of Appeals surprisingly applied only a portion of Connecticut law, regarding the statute of limitations, to a point in time at which the pro se plaintiff mistakenly believed in good faith, that he learned the existence of the initial conspiracy agreements which was just one of the first of various criminal schemes against him. (In fact, at that point he knew very little and did not learn of the magnitude of the pattern of multiple criminal schemes until much later.) A statute of limitation period can only be applied to the last predicate act, which factually does not exist when there is a continuing course of racketeering conduct. Such conduct tolls the running of the limitations period under settled Connecticut law and the Federal Equitable Tolling Doctrine.

III.

The Second Circuit Court of Appeals should have applied the Connecticut statute of limitations used for partnerships to this RICO lawsuit because the majority of the defendants were business partners of the plaintiff and owed a contractual fiduciary duty to him not to engage in the outrageous conduct which is the subject of this lawsuit as set forth in the complaint. These fiduciary relationships minimize the surprise element which the statute of limitations is designed to guard against, thereby mandating the application of the longer limitations period.

ARGUMENT I

The Second Circuit Court Of Appeals Erred In Using The Discovery Principles Under The Common Law Doctrine Of Fraud, In Applying The Statute Of Limitations, To The Partial Discovery Of The Conspirators' Initial Agreements To Participate In The First Criminal Scheme In A Pattern Of Ongoing And Continuous Racketeering Activity, To Vitiate Congress' Expressed Intent And Purpose In Allowing A Ten Year Period Of Time Under The Racketeer Influenced And Corrupt Organizations Act, 18 U.S.C. Section 1961 (5), In Which A Victim/Future Plaintiff May Investigate The Existence Of One Or More Racketeering Schemes To Determine The Viability Of A Violation Under 18 U.S.C. Section 1961 et seq. And Institute An Action After The Point Of Accrual, But Within The Proper Statute Of Limitations Period.

When Congress first enacted the RICO statute in 1970, they provided for a ten (10) year period of time in which an ongoing pattern of racketeering activity could develop. This time period has remained unchanged to the present day. It was certainly logical to assume that if two or more predicate acts did not occur within this ten year time period, then a pattern of racketeering probably did not exist which could be addressed by their new statute. *Sedima, S.P.R.I. v. Imrex Company, Inc.*, ____U.S.____, 105 S.Ct 3275, 3286, 87 L.Ed. 2d 346 (1985).

In other words, Congress specifically provided as much of this ten year period as is necessary in which a racketeering victim could assess the possibilities of whether certain violations have occurred which could be addressed under RICO. The very nature of racketeering conduct involves clandestine operations which if they are ever discovered, are only uncovered via small bits of information at any one time. This is especially true when the covert racketeering operations are part of an ongoing form of business conduct. As piecemeal information may accidentally come to light, immediate

cover-up attempts would be implemented to prevent total discovery, lest the entire operation, both present and future, be destroyed. It is to be noted that a civil plaintiff is further handicapped by not having the government's ability to use the pre-indictment covert discovery procedures such as wiretapping, etc.

The result of this type of conduct would make it extremely difficult for anyone to even be sure that such an enterprise existed, let alone uncover a pattern of racketeering activity. How much more difficult would this job of discovery be if the schemers were those business partners with whom you worked regularly, trusted to the highest degree and relied upon for their utmost commitment and integrity to the success of your business endeavors. Imagine if one of these schemers was your own attorney, with whom you entrusted everything, and who knew everything about your business and personal affairs. Knowing the full extent of your assets and business deals, present and future, imagine further how easy it would be for your own attorney to hide from you secret information and transactions and keep you in the dark as to his covert actions, while you trusted him for wise and honest counsel, which are the facts in the present case. This national problem of white collar crime makes RICO a necessary weapon to battle this problem. "This purpose is not contrary to the intent of Congress but is in fact one of the benefits Congress saw the act as providing. *Cf. Bennett v. Berg,* 685 F.2d 1053, 1063 (8th Cir. 1982), *cert. denied sub nom. Prudential Insurance v. Bennett,* 464 U.S. 1008, 104 S.Ct. 527, 78 L.Ed. 2d 710 (1985) (The legislative history of the Act that RICO is aimed more broadly at criminal activity in the business world)." *Papai v. Cremosnik,* 635 F.Supp 1402, 1411 (ND.Ill. 1986).

Congress did not err in allowing for a ten year window in which a would-be plaintiff could look and investigate to see whether a pattern of criminal conduct was present and developing. This Court and courts throughout the circuits have said that isolated acts are insufficient to establish the "pattern" element necessary for a RICO violation. *Sedima, S.P.R.I. v. Imrex,* ____U.S.____, 105 S.Ct. at 3285 n.14, 87 L.Ed. 2d 346 (1985). The lower courts have almost uniformly interpreted the development of this "pattern of racketeering

activity" to take a fairly long time. "The nature of the crime . . . is such that Congress must assuredly have intended that it be treated as a continuing one. *Toussie v. United States,* 397 U.S. 112, 115, 90 S.Ct. 858, 860, 25 L.Ed. 2d 156 (1970). The language of the Act, which makes a pattern of conduct the essence of the crime, 'clearly contemplates *a prolonged course of conduct.' Id.* at 120, 90 S.Ct. at 863. (emphasis added)" *United States v. Field,* 432 F.Supp. 55 (S.D.N.Y. 1977), *affirmed* 578 F.2d 1371 (2nd Cir. 1978), *certiorari dismissed* 439 U.S. 801, 99 S.Ct. 43, 58 L. Ed.2d 94 (1979). *See, Superior Oil Co. v. Fulmer,* 785 F.2d 252, 255 (8th Cir. 1986) ("a 'pattern of racketeering activity' requires 'related' predicate acts which have 'continuity' in the sense of some *prolonged course of criminal conduct*") (emphasis added); *Sheftelman v. Jones,* 636 F.Supp. 263, 268 (N.D. Ga. 1986) ("the predicate acts in this case did not occur over the *protracted period* present in *Touche Ross.*") (emphasis added); *Bank of America National Trust and Savings Association v. Touche Ross and Co.,* 782 F.2d 966, 971 (11th Cir. 1986) (nine separate acts over a period of three years); *Graham v. Slaughter,* 624 F.Supp. 222, 225 (N.D.Ill. 1985) ("an open ended scheme . . . The fraud was clearly ongoing . . ."); *Papai v. Cremosnik,* 635 F.Supp 1402, 1413 (N.D.Ill. 1986) ("The language of the Act which makes a pattern of conduct the essence of the crime, clearly contemplates *a prolonged course of conduct,*" citing *United States v. Field, infra)* (emphasis added); *Agristor Leasing v. Meuli,* 634 F.Supp. 1208, 1225-26 (D.Kan. 1986) (more than one fraudulent scheme required to establish "pattern," which schemes are separate in time); *Frankart Distributors, Inc. v. RMR Advertising,* 632 F.Supp. 1198, 1201 (S.D.N.Y. 1986) (predicate acts within a single scheme are insufficient to establish "pattern"); *accord, Medallion TV Enterprises, Inc. v. Selec TV, Inc.,* 627 F.Supp. 1290 (C.D. Cal. 1986).

Therefore, a plaintiff must wait and see, while investigating, to determine if there really is a pattern of racketeering before he dare come to court to seek relief under the statute that was enacted to help him in the very situation which the

statute seeks to address. In *Barlow v. McLeod,* No. 85-0022, Dec. 2, 1986, (D.C.D.C. 1986), the Court granted a motion for sanctions under Federal Rule of Civil Procedure 11, because the plaintiff lacked both factual and legal support for his legal claims, as the defendant's conduct did not constitute a pattern of racketeering activity. How can a sincere plaintiff meet his burden under Federal Rule 11 unless he investigates and waits until the pattern of racketeering activity has manifested itself? Coupling this Federal Rule 11 view with the statute of limitations as interpreted by the Second Circuit almost universally bars any plaintiff from seeking redress under the RICO statute, a result neither Congress nor this Court under *Sedima,* has mandated.

The Third Circuit in *Malley-Duff & Associates v. Crown Life Insurance Co.,* 792 F.2d 341, 348 (3rd Cir. 1986), *cert. granted* ____U.S.____, No. 86-531, Dec. 1, 1986 stated "Concepts such as RICO 'enterprise' and 'pattern of racketeering activity' were simply unknown to the common law. . . ." To apply a common law doctrine that the statute of limitations begins to run the moment the plaintiff has an inkling that something is amiss, would serve to deny him the very relief that Congress sought to provide him with. Yet, that is exactly what happened in the court below which applied a three year limitations period to a point in time when Mr. Vakalis first began to discover that there was some clandestine operation being carried on. Since obviously no one came right out and told him what was going on, he had to discover it over time as the enterprise made mistakes and as he became more aware that he was the victim of a criminal plot to destroy him and his business.

The only logical purpose of this ten year window is to reasonably allow the plaintiff the opportunity to perceive that something is wrong, examine the conduct and activities of those involved, study the requirements for a proper RICO violation, determine if a pattern of racketeering activity is present involving two or more criminal episodes containing the requisite number of predicate acts, (or wait until such elements are present) and finally bring the action. To apply the

common law doctrine of discovery and require all this to be done at the plaintiff's first glimpse of the conspiracy, thereby starting the statute of limitations running before the RICO cause of action even accrues, completely vitiates the RICO remedy for injured plaintiffs.

To foreclose injured plaintiffs the justice they should be entitled to under this analysis of applying common law discovery theory as to when the statute of limitations period should begin to run, only serves to reward those criminals who are masters of cover-up. Imagine the hypothetical situation in which in year one the enterprise commits a predicate act which the would be plaintiff discovers. If you have a group of savvy schemers, perhaps even an attorney, as in Mr. Vakalis's situation, all they would have to do in Connecticut, under the statute as sanctioned by the court below, is wait three years before they commit another predicate act. They could be carrying on a very successful racketeering enterprise indefinitely, by simply waiting out the applicable statute of limitations period, or conduct such activities that the plaintiff simply will not discover in the meantime and never be held accountable under RICO. Certainly Congress did not intend to reward such intelligent and well organized criminals, masterminded by a Consigliori at Law.

No, Congress intended RICO to catch and punish these very criminals, yet the courts have made it so difficult for plaintiffs, that extremely meritorious claims are going unheard because the defendants are able to escape liability through malignant techical arguments, such as the inappropriately applied theory of statute of limitations as revealed in this case.

It simply makes no sense in law or in fact for the Congress to provide on one hand a ten year window through which plaintiffs may look to discover, investigate and examine a developing pattern of racketeering activity and gather evidence, only for the courts to then later say that you are forever barred from bringing an action on such injurious conduct because you caught the first glimpse of the pattern of

conduct a couple of years ago, but waited past an unrealistically short statute of limitations period before bringing an action. Should not our courts be in the business of providing injured victims with relief and encouraging plaintiffs to aid our system of justice by elevating the evil deeds of wrongdoers to light?

The simple facts are when Mr. Vakalis first got a glimpse of the possible existence of the racketeering activity perpetuated against him, he had no idea of the complexity, magnitude and scope of the enterprise or its operation and effect. As the schemes continued he learned of the breadth of the racketeering activities and at the point when the schemes were sufficiently developed for him to timely file a proper RICO action, well within the ten year investigatory (in fact only six years) window, the court says he waited too long, dismissed. This mockery of justice should not be sanctioned nor allowed to continue in the courts of our land.

Since Congress failed to prescribe a standard statute of limitations period, the court must look to the state's applicable statute of limitations for application. *Wilson v. Garcia*, ____U.S.____, 105 S.Ct. 1938, 85 L.Ed. 254 (1985) The real concern is when does a RICO cause of action accrue and at what point does the statute begin to run. In light of the need for clear guidance on this federal issue, this Court should review the application of a state's statute of limitations *vis a vis* this ten year window, for those cases involving ongoing racketeering activity, in light of the realities of contemporary criminal enforcement, and settle the confusion in the courts below through a proper interpretation of when a RICO cause of action accrues and therefore when the statute of limitations begins to run. Since in this present case there is no last predicate act on which to apply the statute, and its application to a point in time at the beginning stages of a mere discovery of even only a small portion of the criminal conduct would be patently unfair, as in this case, the need for as much of the investigatory ten year period as is necessary for plaintiffs to analyze and institute RICO actions is vitally essential.

Clearly Congress intended to provide plaintiffs with this necessary time period and the lower courts, who are hostile to RICO actions, are again attempting to cut back and limit the injured plaintiffs' ability to seek the relief which Congress sought to provide, by erecting this judicially created Jericho wall. As it was necessary for the Court to hear and decide the merits in *Sedima, S.P.R.I. v. Imrex Company, Inc.*, ____U.S.____, 105 S.Ct. 3275, 87 L.Ed. 2d 346 (1985), to reprimand the courts for excessively burdening injured plaintiffs with showing extra requirements outside the statute, so it is necessary again for the Court to interpret the RICO statute and guide the lower courts through the establishment of a standard or a national judicial policy regarding the accrual of a RICO cause of action, and the application of a state's statute of limitations.

ARGUMENT II

The Second Circuit Court Of Appeals Erred In Applying Only A Portion Of The Law Regarding The Connecticut Statute Of Limitations To A Lawsuit Brought Under The Racketeer Influenced And Corrupt Organizations Act, 18 U.S.C. Section 1961 et seq., To Bar The Action, Filed By A Pro Se Plaintiff Within The Ten Year Period Of Time Provided By 18 U.S.C. Section 1961 (5), When In Fact There Was No Last Predicate Act, But Rather Conspiracy Agreements With A Continuing Course Of Racketeering Conduct, Which Tolls The Running Of The Limitations Period Under Settled Connecticut Law And The Federal Equitable Tolling Doctrine.

The court below decided to apply the Connecticut statute of limitations for the number of years only, but neglected to entertain the rest of the law surrounding the statute of limitations. Applying only a portion of the law is extremely dangerous and can only work an unfair hardship to the party injured thereby. Connecticut and federal courts have positively established that a statute of limitations can be tolled from running in certain circumstances and this caveat should have been considered and applied by the court below.

Connecticut law clearly provides that an ongoing continuing course of conduct tolls the running of the statute of limitation. "When the action sued upon consists of a continuing course of conduct the statute of limitations does not begin to run until the course of conduct is complete" *Hamilton v. Smith,* 773 F.2d 461 (2nd Cir. 1985). *E.g., Ricciuti v. Voltarc Tubes, Inc.,* 277 F.2d 809 (2nd Cir. 1960); *Handler v. Remington Arms Co.,* 144 Conn. 316, 130 A.2d 793 (1957). *Accord, Bartha v. Waterbury House Wrecking Co.,* 190 Conn 8, 459 A.2d 115 (1983). *See, Vilcinskas v. Sears, Roebuck & Co.,* 144 Conn 170, 127 A.2d 814 (1956).

The Court in *Hamilton,* interpreting Connecticut law, went on to state "it is well established in Connecticut that the three-year limit of . . . [Section] 52-584, which usually would begin to run when the wrongful act occurred, will be tolled when 'there is something tantamount to a fraudulent concealment of a cause of action.' " 773 F.2d at 467-68. At the very least, the defendants' conduct and pattern of racketeering certainly involves the requisite level of fraudulent concealment, as well as extortion and a host of other violations.

In order for a state statute of limitations to apply, there has to be a final act to apply it against, so the time clock can begin to run and measure the period in which suit can be brought. Since this statute can be tolled by a continuing course of conduct, this entire concept (statute and exception) can be translated to apply to RICO actions. However, since the conduct and pattern of racketeering is continuing, there can, by definition, be no last predicate act and hence, no beginning time from which the limitations clock can run. "Like the statute of limitations for conspiracies, which runs from the date of the last overt act, *Grundewald v. United States,* 353 U.S. 391, 396-97, 77 S.Ct. 963, 1 L.Ed. 2d 931 (1957), the statute of limitations for violations of the Act [RICO] runs from the date of the last alleged act of racketeering activity." *United States v. Field,* 432 F.Supp. 55, 59 (1977), *affirmed* 578 F.2d 1371 (1978), *certiorari dismissed* 99 S.Ct. 43, 439 U.S. 801, 58 L.Ed. 2d 94 (1979). It is the last overt act by any participant

in the enterprise which is the crucial event. *United States v. Persico*, 621 F. Supp. 842, 872-873 (D.C.N.Y. 1985).

Therefore, there is simply no conceivable way that the court below could have dismissed this case on statute of limitations grounds, because the statute can not be applied in light of the conspiracy agreements and the continuing course of racketeering activity, which by definition, prevents the establishment of a final act of racketeering activity.

ARGUMENT III

The Second Circuit Court Of Appeals Erred In Refusing To Apply The Proper Connecticut Statute Of Limitations, i.e., That For Partnerships, When The Majority Of Defendants In This Action Were Business Partners Of The Plaintiff And Thereby In A Fiduciary Relationship With Him Which Mandates The Application Of The Longer Limitations Period.

The court below should have used Connecticut's six year statute of limitations applicable to partnerships. Conn. Gen. Stat. Section 52-576. The Connecticut Legislature's choice of six years for causes of action involving partnerships evidences Connecticut's concern that those in fiduciary relationships be given more time to pursue their claims as the element of staleness and surprise is not as relevant in a general partnership. Also, as described earlier, it can be more difficult to discover a pattern of racketeering activity in such a fiduciary relationship and more time is therefore needed to properly assess and institute a RICO action.

In this case, all the respondents but one, owed Mr. Vakalis a fiduciary relationship of the highest order. The broad and liberal construction that RICO complaints should be given, suggest that a six year statute of limitations be used to implement the federal policy of effectuating RICO's broad remedial purpose. *Sedima, S.P.R.I. v. Imrex Company, Inc.*, ____U.S.____, 105 S.Ct. 3275, 87 L.Ed. 2d 346 (1985). *See also, Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 95 S.Ct. 1716, 44 L.Ed. 2d 295 (1975), which held that Congressional and federal policy is paramount and should be the measure in applying state law to federal statutes.

Since the six year statute of limitations, used in fiduciary relationships would effectuate RICO's broad, remedial purposes more effectively, it should have been used in the courts below. *See, Wilson v. Garcia*, ____U.S.____, 105 S.Ct. 1938, 85 L.Ed. 2d 254 (1985) and *Malley-Duff & Associates v. Crown Life Insurance Co.*, 792 F.2d 341, 351 (3rd Cir. 1986), *cert granted* ____U.S.____, No. 86-531, Dec. 1, 1986.

CONCLUSION

It should be clear that a serious problem exists among the Federal Courts in the accrual of a RICO cause of action and in the application of the appropriate state statute of limitations under RICO. In order for a plaintiff to properly bring a RICO action that will not evaporate on a motion to dismiss, he must make absolutely sure that such a claim is even viable, especially the "pattern of racketeering activity" element. This will involve extensive investigation after the plaintiff is even made aware that he is subject of such conduct. It is not often possible to perform this work within the statute of limitations period if the statute begins to run at the first glimpse of criminal conduct and therefore such a statute should not begin to run in alleged ongoing racketeering enterprises. To do otherwise simply vitiates the ten year period Congress has allowed from the statute's inception for would be victims/future plaintiffs to investigate and discover viable RICO conduct and precludes the plaintiffs from obtaining appropriate relief. The appropriate statute of limitations should not be applied before a RICO action accrues. The petitioner, Mr. Vakalis has been severely injured by this inappropriate application of a common law doctrine to interpret and nullify a clear statutory provision.

Since conspiracy agreements which manifest themselves in ongoing racketeering activity can not have any last predicate act, the application of a statute of limitations to such conduct is impossible and the statute is therefore tolled until the conclusion of the enterprises' activities. Mr. Vakalis' action should not have been dismissed on this statute of limitations ground because the application thereof is in direct violation of settled Connecticut law and the federal equitable tolling doctrine.

The court below should have applied the Connecticut six year statute of limitations, because it has been applied to partnerships and it effectuates RICO's broad remedial policy more effectively than the three year statute used below.

For all the foregoing reasons a writ of certiorari should issue to review the judgment and opinion of the Second Circuit Court of Appeals.

Respectfully submitted,

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APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 10th day of October, one thousand nine hundred and eighty-six.

Present:

HONORABLE RICHARD J. CARDAMONE

HONORABLE LAWRENCE W. PIERCE
Circuit Judges

HONORABLE DUDLEY B. BONSAL
*District Judge**

GEORGE VAKALIS,
Plaintiff-Appellant,

—against—

ORDER
Docket No. 86-7396

EUGENE M. KAGAN, JACK HEFLIN, ALLEN M. HEFLIN, COUNTRY CLUB ASSOCIATES, EAST STREET MALL ASSOCIATES, E. REUEL STOLTZ, CPA, SPITZ, SULLIVAN, WACHTEL & FALCETTA, INTERSTATE REGIONAL SHOPPING CENTERS, LTD., BERTRAM ROBINSON, HARLAND SHAPIRO, VSR ASSOCIATES, ELAINE G. KAGAN,
Defendants-Appellees.

George Vakalis appeals from a judgment dismissing his complaint against the appellees as being time-barred under the applicable state statute of limitations. The United States District Court for the District of Connecticut (Clarie, J.) entered the judgment on April 16, 1986.

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* Hon. Dudley B. Bonsal, Senior Judge, United States District Court for the Southern District of New York, sitting by designation.

Vakalis sued the appellees on July 17, 1985 seeking legal and injunctive relief, alleging that the appellees violated various federal statutes, including the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961 *et seq.* The only issues on appeal concern Vakalis's RICO claims. A recitation of the facts involved may be summarized briefly. The appellant and the appellees Eugene M. Kagan, Jack Heflin, Bertram Robinson, and Harland Shapiro were, in various configurations, partners in different companies (also named in the complaint) which developed shopping malls in New England. E. Reuel Stoltz and the firm with which he is associated, Spitz, Sullivan, Wachtel & Falcetta, acted as accountants to the partnerships. Elaine G. Kagan is the wife of Eugene Kagan. Vakalis has alleged that these appellees conspired to defraud him of his interests in the various partnerships. Following a motion for summary judgment based on the statute of limitations made by some of the appellees, the district court dismissed the complaint against all of them as being barred by the running of Connecticut's limitations period for common law fraud. The district court utilized this period because RICO does not itself contain a limitations period.

Appellant challenges the use of Connecticut's period for common law fraud rather than the six-year period provided for by Connecticut's provision for partnership accounting. *See Conn. Gen. Stat. Ann.* §§ 52-576 (accounting); 52-577 (fraud) (West Supp. 1986). It is well-settled that in RICO actions a district court will apply the most analogous state statute of limitations. *See e.g., Durante Bros. and Sons, Inc. v. Flushing National Bank,* 755 F.2d 239 (2d Cir.), *cert. denied,* 105 S. Ct. 3530 (1985). Because the predicate acts alleged consisted of fraudulent activities, the district court correctly utilized the limitations period for actions sounding in common law fraud.

When did the limitations period begin to run? We have held that the period commences when a plaintiff actually knows of the alleged fraud or facts which, in the exercise of

ordinary diligence, should have led to actual knowledge of the fraud. *See, ITT, An Intern. Inv. Trust v. Cornfeld,* 619 F.2d 909, 929 (2d Cir. 1980); *Robertson v. Seidman & Seidman,* 609 F.2d 583, 587 (2d Cir. 1979). As appellant himself admitted in his complaint, he learned of the fraudulent scheme in 1979 and 1980. Thus, the limitations period expired well before the filing of the complaint. Finally, appellant has not shown that the district court abused its discretion in failing *sua sponte* to grant him leave to amend his complaint or fortify it through discovery. *See Foman v. Davis,* 371 U.S. 178, 182 (1962).

The order is affirmed.

/s/ Richard J. Cardamone

Richard J. Cardamone, U.S.C.J.

/s/ Lawrence W. Pierce

Lawrence W. Pierce, U.S.C.J.

/s/ Dudley B. Bonsal

Dudley B. Bonsal, U.S.D.J.

N.B.! *Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.*

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GEORGE VAKALIS	:	
	:	
—vs—	:	Civil No. H-85-614
	:	
EUGENE M. KAGAN, ET AL.	:	

RULING ON MOTIONS TO DISMISS

This action invokes the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961 *et seq.* The plaintiff, George Vakalis, a developer of commercial real estate, claims that the defendants defrauded him of his property through a series of business dealings. It is before the Court on several defendants' motions to dismiss. The Court finds that the plaintiff's claims are barred by the applicable statute of limitations and, accordingly, that the complaint must be dismissed.

Facts

The complaint in this case was filed on July 17, 1985. Ninety-seven pages in length, the complaint alleges, *inter alia*, that the defendants violated the provisions of the Racketeering Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961 *et seq.* The plaintiff, who appears *pro se*, also complains of "fraud, fraudulent concealment, criminal conspiracy, negligent misrepresentation, breach of contract and conversion."

The complaint names as defendants Eugene M. Kagan; Jack Heflin; Allen M. Heflin; Country Club Associates [hereinafter CCA]; East Street Mall Associates [ESMA]; E. Reuel Stoltz, CPA; Spitz, Sullivan, Wachtel & Falcetta [the Spitz firm]; Interstate Regional Shopping Centers, Ltd. [IRSC]; Bertram Robinson; Harland Shapiro; VSR Associates [VSR]; and Elaine G. Kagan. The plaintiff alleges that the defendants

defrauded him in connection with various commercial real estate development partnerships:

> "On or about mid 1975 and during 1976 and 1977 through December of 1980 and thereon to the present . . . [the] defendants . . . unlawfully and willingly conducted the affairs of East Street Mall Associates, Country Club Associates, Interstate Regional Shopping Centers, Ltd., Rockingham Mall Associates [hereinafter RMA], and VSR Associates through a pattern of racketeering activity."

Among the acts complained of in the first and eleventh counts (the RICO counts) are attempts by Eugene Kagan, business partner and counsel to the plaintiff, to defraud the plaintiff by inducing him to expend time and money on behalf of the various partnerships, including shopping center projects in Westfield and Worcester, Massachusetts, and in Rockingham, Vermont. In connection with his RICO claim, the plaintiff lists a number of "racketeering acts," that is, use of the mails and telephone conversations "in furtherance of the scheme to defraud and to obtain monies and properties from Plaintiff George Vakalis by means of false and fraudulent pretenses, representations, and promises." These acts include fifty-nine instances of alleged mail fraud, *see* 18 U.S.C. § 1341, and thirty-five instances of alleged wire fraud, *see* 18 U.S.C. § 1343.

Counts two through eight and ten of the plaintiff's complaint invoke various sections of Title 18 of the United States Code, including § 1341 (mail fraud), § 1343 (wire fraud), § 2314 (transportation of stolen money), § 152 (concealment of assets from Title 11 creditor) and § 1952 (b)(2) (interstate travel in aid of racketeering enterprises). Count nine alleges a "trick scheme . . . as part of the on-going fraud scheme to force General Partner George Vakalis out of the Country Club Associates partnership in an effort to further conceal and cover up the actions of co-schemer Allen M. Heflin."

On December 9, 1985, this Court denied the plaintiff's motion to amend his complaint to cite in additional defendants and his motion to consolidate the instant case with an interpleader action pending before the United States District Court for the District of Massachusetts. The Court then denied, on March 19, 1986, the plaintiff's motion to reconsider the motion to amend.

The interpleader action is one of several closed or pending cases in state and federal courts in Connecticut and Massachusetts which involve the plaintiff and which are related to the subject matter in this lawsuit. For example, the plaintiff moved this Court on November 27, 1985 for a temporary restraining order enjoining proceedings in the Bankruptcy Court for this District, which proceedings had been brought by Shawmut Bank & Trust (one of the defendants named in the plaintiff's proposed amendment) against the plaintiff's wife. That motion was denied.

Also, the interpleader action pending in the District of Massachusetts involves claims to the proceeds from a judgment obtained by the plaintiff against several of the defendants in this case in Massachusetts Superior Court in 1983. Documents appended to the plaintiff's complaint in the instant case include his complaint in that state court action. Captioned *George Vakalis v. Eugene M. Kagan, Jack Heflin, and Allen Heflin,* Massachusetts Superior Court (at Worcester) Docket No. 80-18814, the complaint comprises, *inter alia,* allegations of fraud, deceptive trade practices, and breach of a partnership agreement. The special jury verdict and the judgment of the court in that case have also been appended to the plaintiff's complaint. They reveal that the plaintiff obtained a judgment of $362,934.30 against all three defendants on January 31, 1983 on Count IV of his complaint (alleging breach of a partnership agreement). A special verdict form with a series of interrogatories was submitted to the jury. The jury was asked: "Was there in connection with the partnership known as Country Club Associates any breach by the defendants Kagan and Heflin of any fiduciary duty as

partners owed by them to the plaintiff Vakalis?" The jury answered affirmatively.

Most of the defendants have moved to dismiss the present complaint on various grounds, as failing to state a claim upon which relief can be granted. *See* Fed.R.Civ.P. 12(b)(6). Eugene Kagan, Jack Heflin, Alan Heflin, CCA, IRSC, and Elaine Kagan have moved to dismiss on grounds of the statute of limitations as to all six defendants, on grounds of *res judicata* as to Kagan, Jack Heflin, and Alan Heflin, and on grounds of lack of a factual basis for the claims as to Elaine Kagan and CCA. Harland Shapiro has moved to dismiss on grounds of the statute of limitations and *res judicata*. ESM cites the same grounds for dismissal and also contends that there is no factual basis for the plaintiff's claim.

The three remaining defendants who have appeared (VSR has not appeared in the case), Bertram Robinson, E. Reuel Stoltz, and the Spitz firm, have not filed motions to dismiss but have answered the complaint.

Discussion of Law

"[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). It is also well established that "the pleadings of *pro se* litigants are not held to the same exacting standards as those drafted by lawyers." *Haines v. Kerner*, 404 U.S. 419, 420 (1972). In deciding a motion to dismiss under Rule 12(b)(6), the court must, of course, accept as true the allegations of the complaint. This is "especially true when the complaint is made pro se." *Moore's Federal Practice* § 12.07.

The Court notes that those counts of the complaint (two through eight and ten) which invoke various federal criminal statutes (in particular 18 U.S.C. §§ 1341 & 1343) do not state claims cognizable in a civil action. It is axiomatic that a

private plaintiff cannot prosecute a criminal charge; more specifically, no private cause of action exists under the mail and wire fraud statutes (18 U.S.C. §§ 1341 & 1343). *See, e.g. Ryan v. Ohio Edison Co.*, 616 F.2d 1170 (6th Cir. 1979). Accordingly, alleged violations of 18 U.S.C. §§ 1341 & 1343 are relevant in this case only to the extent that they satisfy the predicate acts requirement of 18 U.S.C. § 1961 (1).

Among the grounds urged by the moving defendants for dismissal of the plaintiff's complaint is the statute of limitations. Dismissal under Rule 12(b)(6) is proper if a "bar to relief is apparent from the face of the complaint, such as . . . the statute of limitations." *Moore's Federal Practice* § 12.07. In a RICO suit, the Court must look to the most analogous state law cause of action to determine the proper limitations period. In a case such as this one, alleging as predicate acts mail and wire fraud in furtherance of a scheme to defraud the plaintiff of his property, the Court finds that the analogous state law claim is one for common law fraud. *See Kirschner v. Cable/Tel Corp.*, 576 F. Supp. 234, 241 (E.D. Pa. 1983). The proper time period, therefore, is three years. *See* Conn. Gen. Stat. § 52-277.

The occurrence which triggers the running of the statute is that of the last predicate act, in this case one of mail or wire fraud. Most of the alleged predicate acts set out in the plaintiff's complaint occurred in 1979 and 1980.[1] No allegation is made of any such act occurring within three years from the filing of the complaint on July 17, 1985. Indeed, in Count 11 of the complaint, which details alleged "Rico violations against Eugene M. Kagan, Allen M. Heflin, Jack Heflin, Bertram Robinson, Harland Shapiro, and E. Reule [sic] Stoltz, Spitz, Sullivan, Wachtel & Falcetta, Country Club Associates, East Street Mall Associates, Interstate Regional Shopping Centers, Ltd., and VSR, Associates," the plaintiff acknowledges that he "discovered further the existence and extent of the major scope of the fraudulent scheme during late 1979 and 1980." At the latest, a cause of action for fraud accrues when the fraud is actually discovered or should reasonably have been discovered. *Umstead v. Durham Hosiery*

Mills, Inc., 578 F. Supp. 342, 348 (M.D.N.C. 1984). Hence it appears from the face of the complaint that the action is time barred. Although defendants E. Reuel Stoltz, the Spitz firm, and Bertram Robinson have not moved to dismiss the complaint, they have interposed as affirmative defenses to the plaintiff's claim the statute of limitations. The absence of a predicate act within the statutory period renders the complaint untimely as to these parties as well; it must be dismissed.

Were it not for the running of the statutory limitations period, the plaintiff's claim as to several of the defendants would nonetheless be precluded by the doctrine of *res judicata*. Although the Court must ordinarily confine itself to the face of the complaint in addressing a motion brought under Rule 12(b)(6), unless it chooses to transform the motion into one for summary judgment under Rule 56, the Court may examine documents submitted along with the complaint in deciding the propriety of dismissal. *Goldman v. Belden*, 754 F.2d 1059, 1065–66 (2d Cir. 1985). In this instance the plaintiff has appended to his complaint a copy of a complaint in an action brought in Massachusetts Superior Court in 1980, along with copies of the special verdict form and the judgment rendered in that litigation. It is apparent from the two complaints that the plaintiff's claim in this case against the state court defendants is precluded by the earlier proceedings.

When a party has obtained a final judgment on the merits, he cannot relitigate the issues which were, or might have been, adjudicated in the first instance in a second lawsuit. *See Sea-Land Services, Inc. v. Gaudet*, 414 U.S. 573, 578–79 (1974); *Tucker v. Arthur Andersen & Co.*, 646 F.2d 721, 727 (2d Cir. 1981). "Once a party has fought out a matter in litigation with the other party, he cannot later renew that duel." *Commissioner v. Sunnen*, 333 U.S. 591, 597–98 (1948). This principle is in no way diminished when a federal court is asked to give preclusive effect to a state court judgment. *See, e.g., Migra v. Warren City School District*, 465 U.S. 75, 81 (1984). In applying the doctrine of claim preclusion to the facts of the case, the Court must inquire

> "whether a different judgment in the second action would impair or destroy rights or interests established by the judgment entered in the first action, whether the same evidence is necessary to maintain the second cause of action as was required in the first, and whether the essential facts and issues in the second were present in the first."

Herendeen v. Champion International Corp., 525 F.2d 130, 133-34 (2d Cir. 1975).

There can be little doubt in this case, but that the allegations of the instant complaint directed at defendants Allen Heflin, Jack Heflin, and Eugene Kagan represent nothing more than an attempt to resuscitate the claim that proceeded to judgment in Massachusetts Superior Court in 1983. In that complaint, as in this one, the plaintiff alleged a series of acts on the part of the defendants by which they deprived him of his interest in commercial real estate ventures in Worcester and Westfield Massachusetts. The jury in the Massachusetts action found in the plaintiff's favor on the fourth count of his complaint (directed verdicts having been entered against the plaintiff on the other three counts of that complaint and on all six counts of a consolidated action), which count alleged a breach of the defendants' fiduciary duty to the plaintiff, a duty growing out of their business partnership. The jury awarded Mr. Vakalis over $360,000 in damages. A different judgment in the instant action would clearly impair rights established in the earlier litigation. Moreover, although denominated a RICO claim, the instant action, as it pertains to the party defendants in the Massachusetts case, comprises the same "essential facts and issues" as that earlier litigation, and is therefore barred by the principles of *res judicata.*

Conclusion

The Court concludes that the plaintiff's claim is time barred as to all defendants. Moreover, principles of *res judicata* preclude this claim to the extent that it is addressed to Eugene

Kagan, Allen Heflin and Jack Heflin. The defendants' motions to dismiss are granted. The Court on its own motion dismisses the complaint as to the defendants Robinson, Stoltz, and the Spitz firm on grounds of the statute of limitations.

SO ORDERED.

Dated at Hartford, Connecticut, this 16th day of April, 1986.

/s/ T. Emmet Clarie

T. Emmet Clarie
Senior District Judge

Footnote

[1] Several dates appear among the enumerated predicate acts which would fall within the statutory period (#7, p. 37; #47, p. 85; #'s 87-89, p. 47). It is apparent from context that the former two dates are typographical errors. The latter three involve Shawmut Bank, which is not a party to this action.

Although several paragraphs of the complaint allege fraudulent acts to have occurred within the statutory period (i.e., after July 17, 1982), none of those allegations can be construed as predicate acts of racketeering activity sufficient to avoid application of the statute of limitations. (*See* ¶¶ 63, 64, 66, 100-103, 105, and 109).

THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (RICO) 18 U.S.C. §§ 1961-1968, AS AMENDED

SECTION 1961. DEFINITIONS

* * *

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

* * *

SECTION 1962. PROHIBITED ACTIVITIES

* * *

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections[1] (a), (b), or (c) of this section.

* * *

§ 52-576. Actions for account or on simple or implied contracts

(a) No action for an account, or on any simple or implied contract, or on any contract in writing, shall be brought but within six years after the right of action accrues, except as provided in subsection (b) of this section.

(b) Any person legally incapable of bringing any such action at the accruing of the right of action may sue at any time within three years after becoming legally capable of bringing the action.

* * *

§ 52-577. Action founded upon a tort

No action founded upon a tort shall be brought but within three years from the date of the act or omission complained of.

Supreme Court, U.S.
FILED
APR 4 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-1141 (2)

IN THE

SUPREME COURT

OF THE

United States

OCTOBER TERM, 1986

GEORGE VAKALIS - PETITIONER
vs.
EUGENE M. KAGAN, JACK HEFLIN, ALLEN M. HEFLIN, COUNTRY CLUB ASSOCIATES, EAST STREET MALL ASSOCIATES, E. REUEL STOLTZ, CPA, SPITZ, SULLIVAN, WACHTEL & FALCETTA, INTERSTATE REGIONAL SHOPPING CENTERS, LTD., BERTRAM ROBINSON, HARLAND SHAPIRO, VSR ASSOCIATES, ELAINE G. KAGAN -RESPONDENTS

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IN THE

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OCTOBER TERM, 1986

GEORGE VAKALIS - PETITIONER

vs.

EUGENE M. KAGAN, JACK HEFLIN, ALLEN M. HEFLIN, COUNTRY CLUB ASSOCIATES, EAST STREET MALL ASSOCIATES, E. REUEL STOLTZ, CPA, SPITZ, SULLIVAN, WACHTEL & FALCETTA, INTERSTATE REGIONAL SHOPPING CENTERS, LTD., BERTRAM ROBINSON, HARLAND SHAPIRO, VSR ASSOCIATES, ELAINE G. KAGAN -RESPONDENTS

JOINT BRIEF OF RESPONDENTS
IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

STATEMENT OF THE CASE

On August 11, 1980, respondents Jack Heflin and Eugene M. Kagan exercised their contractual right to purchase the partnership interest of the petitioner George Vakalis in a real estate development partnership known as Country Club Associates. That action was the culmination of years of disputes among the participants, who were involved in a number of different real estate ventures.

Two weeks after the buy-out, petitioner filed a complaint in the superior court of the Commonwealth of Massachusetts, Hampden County, against respondents Eugene M. Kagan, Jack Heflin, Allen M. Heflin, and Bertram Robinson, involving one of those ventures. *Vakalis v. Kagan, et al.*, No. 80-1280, filed August 23, 1980. Later that same year, petitioner filed another lawsuit in the superior court of the Commonwealth of Massachusetts, this time in Worcester County, also complaining of his treatment by respondents Eugene M. Kagan, Jack Heflin, and Allen M. Heflin. *Vakalis v. Eugene M. Kagan, Jack F. Heflin and Allen M. Heflin,* No. 80-18814, filed December 10, 1980. Petitioner obtained a jury verdict in his favor, and an award of damages, in a consolidated trial of these two cases on January 31, 1983. See the opinion of the District Court, Pet. App. 9a-10a.[1]

Not content with his recovery in the Massachusetts courts, on July 17, 1985, petitioner filed a 97-page Complaint in the United States District Court for the District of

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[1] References to the opinions below will be cited to the Appendix to the Petition for Certiorari as Pet. App. The District Court opinion may be abbreviated as Dist. Ct. Op. The opinion of the Court of Appeals may be abbreviated as Ct. App. Op. References to the Complaint in this case will be cited to the appendix filed by respondents as App. _____.

Connecticut.[2] Petitioner's Complaint alleges eleven counts of violations of the Racketeer Influenced Corrupt Organization Act (RICO), 18 U.S.C. § 1961 et seq. The Complaint seeks "treble the damages sustained by [the petitioner] in the amount of $15,000,000 plus an amount yet unknown to [the petitioner] in addition to other consequential, Hedonic and physical stress damages and incidental damages plus $35,000,000 punitive damages plus costs and all attorney's fees." Complaint at 96-97, App. 222a-23a. In essense, petitioner's Complaint alleges that the defendants in the Massachusetts actions, with the assistance of other respondents not named in the Massachusetts actions, have fraudulently deprived him of his asserted interests in various real estate ventures.

Although petitioner filed his complaint *pro se,* he informed the Court below that the Complaint had been prepared and reviewed by counsel, a "federal prosecutor", Tr. of Proceedings, Sept. 9, 1985, at 10, *Vakalis v. Kagan,* No. H-85-614, (D. Conn.), and the Complaint's excruciating detail gives credence to his claim. The Complaint contains eleven pages of specifications of "predicate acts" intended to establish the "pattern" of racketeering activity required by RICO, 18 U.S.C. § 1961(5). See Complaint, Count 1, paragraphs 106a-106c, App. 91a-110a.

With a few exceptions carefully noted and appropriately dismissed as insignificant by the District Court, Dist.

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[2] On June 4, 1986, petitioner filed two additional cases in the Superior Court of Connecticut, Judicial District of Hartford at Hartford. *George Vakalis v. Eugene M. Kagan, Jack Heflin and Mark Robinson,* No. CV-86-0319390-S; *George Vakalis v. Eugene M. Kagan, Jack Heflin and Allen M. Heflin,* No. CV-86-0319389-S. Petitioner also filed two suits against financial institutions involved in the same series of real estate transactions. *Vakalis v. State Mutual Life Assurance Co.,* Docket No. 83-0539-F (D. Mass. 1985), *aff'd mem.,* 787 F.2d 579 (1st Cir. 1986); *Vakalis v. Shawmut Bank,* Docket No. 85-02125 (D. Mass. 1985) (dismissed).

Ct. Op., Pet. App. 11a n.1, all of the predicate acts carefully enumerated by petitioner were dated more than three years prior to the filing of his Complaint. Indeed, the vast majority of the acts alleged are claimed to have occurred in 1979 and 1980 during the controversy leading to petitioner's ouster from Country Club Associates. Moreover, although petitioner argues in this Court that he "did not learn of the magnitude of the pattern of multiple criminal schemes until much later," Pet. 6; see *id.* at 10-12, his Complaint alleges otherwise. Thus, petitioner alleges that the scheme against him was "cover[ed] up by tricks and schemes and devices . . . until sometime in 1979 . . ." Complaint, count 9, paragraph 3, App. 146a. Even more explicitly, petitioner alleges later in his Complaint that "[t]he plaintiff discovered further the existence and extent of the major scope of the frauduient scheme during late 1979 and 1980." Complaint, Count 11, paragraph 14, App. 218a.

Most of the respondents moved to dismiss the Complaint for failure to state a claim upon which relief can be granted. Among the grounds raised in these motions were the expiration of the statute of limitations and res judicata. The respondents who did not file motions to dismiss raised the statute of limitations as an affirmative defense in their answers. *See* Dist. Ct. Op., Pet. App. 7a-9a. Relying on the dates of the alleged predicate acts set forth by petitioner in his Complaint, the District Court held that the RICO action was barred by the three-year statute of limitations contained in Conn. Gen. Stat. § 52-577.[3] The District Court applied § 52-577 to plaintiff's Complaint because it concluded that the gravamen of the Complaint sounded in fraud, and § 52-577 is the Connecticut statute of limitations applicable to common law fraud actions. The Court also concluded

[3] Section 52-577 reads: "No action founded upon a tort shall be brought but within three years from the date of the act or omission complained of."

that the statute began running at the later of the last predicate act alleged in the Complaint or the date the conspiracy became known. Dist. Ct Op., Pet. App. 8a-9a. Applying that standard, the Court concluded that "it appears from the face of the Complaint that the action is time barred." *Id.*, Pet. App. 9a.

On appeal, the United States Court of Appeals for the Second Circuit summarily affirmed in an unpublished opinion. Pet. App. 1a-3a. The Court of Appeals rejected petitioner's contention that the District Court should have applied the six-year statute of limitations provided by Conn. Gen. Stat. § 52-576 for a partnership accounting. Rather, the Court of Appeals agreed with the District Court that petitioner's action sounded in fraud and that the three-year statute of limitations applied. The Court of Appeals held that the limitations period began to run when petitioner had actual knowledge of the alleged fraud. Pet. App. 2a-3a. Petitioner's allegation that he "discovered further the existence and extent of the major scope of the fraudulent scheme during late 1979 and 1980," Complaint, Count 11, paragraph 14, App. 218a, established beyond dispute the date on which the statute of limitations began running.[4]

SUMMARY OF ARGUMENT

The petition for certiorari presents no questions which deserve the attention of this Court. Petitioner advocates a unique theory of the appropriate statute of limitations for RICO which has no support in the legislative history and has never been adopted by any court. Petitioner accepts the

[4] The District Court had also concluded that petitioner's claims as to respondents Allen M. Heflin, Jack Heflin, and Eugene M. Kagan were barred by the doctrine of res judicata. Dist. Ct Op., Pet. App. 9a-10a. The Court of Appeals did not consider that aspect of the District Court's holding. Similarly, the District Court did not reach all of the grounds for dismissal asserted by the various respondents, such as respondent East Street Mall's contention that the claims against it were barred by the doctrine of res judicata and that petitioner's complaint does not set forth any cause of action as to East Street Mall.

legal theories used by the courts below but asks this Court to review the application of those theories to the particular facts of his case. There is no reason for this Court to do so.

Petitioner has not presented to this Court and did not raise in the courts below the issues presented for review in *Agency Holding Corp., et al., v. Malley-Duff & Associates, Inc.*, No. 86-497, and *Crown Life Insurance Co., et al., v. Malley-Duff & Associates, Inc.*, No. 86-531. Moreover, whichever side prevails in *Malley-Duff*, the result below would not change. Accordingly, this Court should deny the petition for certiorari without waiting for the *Malley-Duff* case to be decided.

ARGUMENT

I. NONE OF THE QUESTIONS PRESENTED BY THE PETITION FOR CERTIORARI WARRANTS THE ATTENTION OF THIS COURT

Petitioner presents three questions for review by this Court. Pet. i. Petitioner's first question asks this Court to adopt a statute of limitations theory for RICO that has not been adopted, or even considered seriously, by any court and for which petitioner presents no hint of support in the legislative history of the statute. His second question asks this Court to review a question of state law, whether the District Court and the Court of Appeals properly applied the Connecticut statute of limitations. The final question presented by the petitioner also asks this Court to determine a question of state law, whether the District Court and the Court of Appeals identified the proper Connecticut statute of limitations in the particular context of this petitioner's claims for relief. None of these questions deserves the attention of this Court.

A. This Court Should Not Review the Unique and Totally Unsupported Theory of a Ten-Year Statute of Limitations in RICO Actions Presented by Petitioner's First Question.

Although his argument is less than pellucid, the theory in the first segment of petitioner's request for review appears to be that the applicable state statute of limitations does not even begin to run against a RICO claimant until ten years have passed from the date of the first predicate act. Petitioner bases this imaginative claim on the fact that Congress defined a "pattern of racketeering activity" to require the commission of at least two "acts of racketeering activity" within a ten-year period. 18 U.S.C. § 1961(5).

The legislative history contains no suggestion that Congress intended the ten-year period within which the statutory definition of a pattern of racketeering activity could be satisfied to be a "window", Pet. 12, during which the statute of limitations would be tolled. No lower court in the federal system ever has so held. Indeed, respondents have found no case in which a court has even suggested the possibility that the ten-year period contained in the definition of a "pattern of racketeering activity" might serve as a period during which the statute of limitations was tolled.

Petitioner's argument rests on a fundamental misunderstanding of what the courts below held. Petitioner contends that the holdings below allow the sanctions of RICO to be avoided by the simple expedient of spacing predicate acts more than three years apart. Pet. 11. That argument makes no sense.

Neither the discovery theory relied on by both courts below nor the alternative last predicate act theory relied on by the district court conflicts with the congressional determination that a pattern of racketeering activity may develop over a ten-year period. The last predicate act analysis looks forward from the time of the last act in the alleged pattern; it places no limit on how far back the plaintiff may go in order to establish a pattern of racketeering activity. Similarly, a requirement that a plaintiff bring a RICO action sounding in fraud within the appropriate statutory period after he has

actual knowledge of the alleged fraud against him places no improper bounds on the scope of relief obtainable under RICO. That rule allowed petitioner to make full use of the ten-year period defined by Congress to prove the existence of a "pattern of racketeering activity"; it simply required him to act within the specified time once he knew facts on which he could rely to establish that pattern.

Thus, the absence of legislative history or precedent to support petitioner's argument is matched by that argument's lack of internal logic. This Court sits to resolve significant legal questions as to which the lower courts are in disagreement or to correct a lower court which has "so far departed from the accepted and usual course of judicial proceedings" that exercise of this Court's supervisory power is warranted. Sup. Ct. R. 17.1(a), (c). The first question presented in the Petition for Certiorari does not identify any important question of federal law or deviation from accepted practice which would warrant review by this Court.

B. The Issue Whether the Courts Below Properly Applied Connecticut State Law Doctrines to the Particular Facts of Petitioner's Case, Presented by Petitioner's Second and Third Questions, Does Not Warrant Review.

Petitioner's second and third questions presented ask this Court to determine whether the courts below properly applied Connecticut state law to the facts of petitioner's claim. In his second question, petitioner contends that the courts below "erred in applying only a portion of the law regarding the Connecticut statute of limitations" to his case and misconstrued "settled Connecticut law". Pet. i, 13-15. In his third question, petitioner claims only that the courts below chose the wrong Connecticut statute of limitations to apply to the facts of his case. Petitioner does not contend that the courts below erred by holding that the statute of limitations would begin to run on the date of the last predi-

cate act, *see* Pet. 14, nor does petitioner challenge the doctrine that a RICO action is governed by the state statute of limitations applicable to the state law action most closely analogous to the claims made in the RICO complaint. Rather, petitioner asks this Court to exercise its authority to determine whether the lower courts correctly applied settled legal doctrine to the facts of his case.

Petitioner's attacks on the substance of the rulings below are totally without merit.[5] More importantly for present purposes, petitioner presents no justification for his request that this Court review the errors he claims to have occurred. This Court does not sit to correct the lower federal courts' understanding or application of state law, *Huddleston v. Dwyer,* 322 U.S. 232, 237 (1944), or merely to resolve claims by individual litigants that the lower courts have incorrectly ruled against them. *Ross v. Moffitt,* 417 U.S. 600, 616-617 (1974). Petitioner offers no other justification for his request that this Court grant certiorari to review his case.

Petitioner's contention that the Connecticut statute of limitations for actions for an account or on a contract,

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[5] Petitioner's contention that the lower courts misapplied the Connecticut statute of limitations is wrong in two respects. First, petitioner attempts to rely on the Connecticut doctrine of fraudulent concealment as justification for his claim. Pet. at 14. That reliance is belied by petitioner's allegations that he had discovered the alleged conspiracy by 1979 or 1980. See p. 3, 4 *supra.* Petitioner's claim that the courts below should have applied the Connecticut doctrine applicable to continuing wrongs is defeated by his own recognition that " 'the statute of limitations for violations of the act [RICO] runs from the date of the last alleged act of racketeering activity.' " Pet. 14, quoting *United States v. Field,* 432 F. Supp. 55, 59 (S.D.N.Y. 1977), *aff'd,* 578 F.2d. 1371 (2d Cir. 1978), *cert. dismissed,* 439 U.S. 801 (1979). Petitioner simply refuses to recognize that the District Court carefully reviewed his extensive allegations and properly concluded that he did not plead any predicate acts within three years of the date of his Complaint.

Conn. Gen. Stat. § 52-576(a), should have been chosen by the courts below as the applicable statute of limitations simply ignores the essence of his own Complaint. As petitioner states on virtually every one of the 97 pages of his Complaint, his claim is that he was the victim of a massive fraud. The lower courts correctly chose to apply the statute of limitations applicable to civil fraud.

II. THE RESULT BELOW WILL NOT BE AFFECTED BY THIS COURT'S DECISION IN *AGENCY HOLDING CORP., ET AL., V. MALLEY-DUFF & ASSOCIATES, INC.*

On December 1, 1986, this Court granted certiorari in the cases of *Agency Holding Corp., et al., v. Malley-Duff & Associates, Inc.*, No. 86-497, and *Crown Life Insurance Co., et al., v. Malley-Duff & Associates, Inc.*, No. 86-531, to review the opinion of the Court of Appeals for the Third Circuit in *Malley-Duff & Associates v. Crown Life Insurance Co.*, 792 F.2d 341 (1986). The questions on which this Court has granted review in *Malley-Duff* concern the procedure by which federal courts should choose limitations periods for civil RICO claims and the manner in which the starting period for determining whether a statute of limitations has run is to be determined in a civil RICO claim.

Although there is a surface similarity between the questions on which this Court has granted review in *Malley-Duff* and the questions presented by petitioner, the issues to be reviewed in *Malley-Duff* are not the issues raised by petitioner in the courts below or in this Court. Moreover, the outcome of this case would be the same whether the governing rule of law is the rule favored by the petitioners or the rule favored by the respondents in *Malley-Duff*. Accordingly, there is no reason for this Court either to grant a writ of certiorari in this case or to delay its decision on the petition for certiorari until it has decided the *Malley-Duff* case.

The first issue presented by the *Malley-Duff* case is whether the state statute of limitations applicable to a civil RICO action is to be determined by selecting a single state statute to govern all civil RICO actions in that state, as the Third Circuit held, or by selecting the state statute applicable to the state cause of action most closely analogous to the particular RICO complaint. Both the Sixth Circuit, *Silverberg v. Thomson McKinnen Securities, Inc.*, 787 F.2d 1079 (1986), and the Second Circuit in its opinion below, Ct. App. Op., Pet. App. 2a, have adopted the latter rule. The respondents in *Malley-Duff* support the position taken by Judge Sloviter, concurring in the judgment of the Third Circuit, that the four-year statute of limitations contained in the Clayton Act, 15 U.S.C. § 15b, should be applied to all RICO claims.

In his argument to the Court of Appeals and in his plea to this Court, petitioner has not challenged the rule of law followed by the courts below. Rather, petitioner has simply argued that those courts should have chosen another Connecticut statute because the facts of his Complaint make that statute more appropriate than the statute chosen by the courts below. Petitioner made no claim in the courts below and makes no claim in this Court that the lower courts should have chosen a single Connecticut statute or a single federal statute to govern all RICO actions in Connecticut, nor does he contend that the statute he favors for his case should be applied to all RICO actions.

Thus, petitioner has not raised in any court the issue to be considered by this Court in *Malley-Duff*. Since petitioner has not raised that issue in his petition or in the courts below, disposition of his case should not be affected by this Court's decision in *Malley-Duff*. *Youakim v. Miller*, 425 U.S. 231, 234 (1976); *Irvine v. California*, 347 U.S. 128, 129 (1954).

In any event, if this Court determines that the rule adopted by the Court of Appeals for the Third Circuit states the correct procedure for identifying statutes of limitations for civil RICO actions, the result in this case will be the same. The statute of limitations applied by the courts below is the Connecticut statute applicable to all actions "founded upon a tort". The only other remotely possible candidate to be the generally applicable RICO statute of limitations in Connecticut would be Conn. Gen. Stat. § 52-584, the statute applicable to actions "for injury to the person, or to real or personal property, caused by negligence, or by reckless or wanton misconduct . . . "[6] The limitations period in that statute is either "two years from the date when the injury is first sustained or discovered or in the exercise of reasonable care should have been discovered," or "three years from the date of the act or omission complained of," whichever is shorter. Thus, the limitations period under § 52-584 is the same as or shorter than the limitations period under § 52-577. Whichever statute is applied, petitioner's action is barred.[7]

Petitioner is similarly unable to take advantage of the second issue to be considered by this Court in *Malley-Duff*. That question is whether the statute of limitations in a RICO action begins to run for each alleged injury as of the date of the predicate act that causes that injury or begins to run only as of the date of the last predicate act. Again, petitioner has not challenged the rule of law adopted below, which triggers the statute of limitations as of the date of the

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[6] There is no equivalent in Connecticut to the Pennsylvania "catchall" statute of limitations, 42 Pa. Cons. Stat. Ann. § 5527 (Purdon 1981), applicable to statutory actions in general, which was applied by the Third Circuit in *Malley-Duff*. *See* Conn. Gen. Stat. Ch. 926.

[7] If this Court chooses to apply the four-year limitations period of the Clayton Act, the result below will remain the same because all of the predicate acts alleged in the Complaint occurred more than four years before the Complaint. *See* Dist. Ct. Op., Pet. App. 8a-9a, 11a n.1; Complaint, count 1, paragraphs 106a-106c, App. 91a-110a.

last predicate act. *See* Pet. 14. Rather, he has merely challenged the application of that rule.

Moreover, adoption by this Court in *Malley-Duff* of the suggested alternative to the rule used by the courts below would not benefit petitioner. Petitioner has set forth in exceedingly fine detail the predicate acts on which he relies and the injury he claims. His detailed Complaint establishes that the statute of limitations had expired before he sued whether that statute runs from the date of each predicate act or solely from the date of the last predicate act.

Since petitioner has not presented the contentions that this Court will resolve in *Malley-Duff* and since the issues raised in *Malley-Duff* do not lead to a different result in this case whether the opinion in *Malley-Duff* is affirmed or reversed, this petition should be dealt with and denied without regard to the pending *Malley-Duff* case.

CONCLUSION

The Petition for Certiorari in this case presents no significant legal questions and does not warrant review by this Court. Whatever the outcome in the *Malley-Duff* case now pending before this Court, the result below is correct and should be allowed to stand. Respondents therefore respectfully request that the Petition for Certiorari be denied.

Respectfully Submitted,

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No. 86-1141 (3)

Supreme Court, U.S.
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CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

GEORGE VAKALIS,
Petitioner,

v.

EUGENE M. KAGAN, JACK HEFLIN, ALLEN M. HEFLIN, COUNTRY CLUB ASSOCIATES, EAST STREET MALL ASSOCIATES, E. REUEL STOLTZ, CPA, SPITZ, SULLIVAN, WACHTEL & FALCETTA, INTERSTATE REGIONAL SHOPPING CENTERS, LTD., BERTRAM ROBINSON, HARLAND SHAPIRO, VSR ASSOCIATES, ELAINE G. KAGAN
Respondents.

APPENDIX TO JOINT BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

GEORGE VAKALIS, PLAINTIFF	)	CIVIL ACTION NO.
V.	)	
EUGENE M. KAGAN JACK HEFLIN ALLEN M. HEFLIN COUNTRY CLUB ASSOCIATES EAST STREET MALL ASSOCIATES E. REUEL STOLTZ, CPA, SPITZ, SULLIVAN, WACHTEL & FALCETTA INTERSTATE REGIONAL SHOPPING CENTERS, LTD. BERTRAM ROBINSON HARLAND SHAPIRO VSR ASSOCIATES ELAINE G. KAGAN	)	CLAIM OF TRIAL BY JURY VIOLATIONS: 18 U.S. Code The Racketeer Influence and Corruption Organization Act (RICO) (1970) Secs. 1964 (e) (1976) Secs. 1962 (a)(b)(c) (d); 1341; 1343; 2314; 1951; 1952; 1964 (a); 1961 (4); art. 152

PRELIMINARY STATEMENT

- VENUE -

JURISDICTION

1. This is a civil action for damages, attorney's fees, costs, and other legal and equitable relief arising under the Racketeer Influence and Corruption Organization Act, 18, U.S.C. Secs. et seq. (1970) ("RICO") and the common law of fraud, fraudulent concealment, criminal conspiracy, negligent misrepresentation, breach of contract and conversion.

2. Jurisdiction over this action is based upon Section 1964 (a) and (c) of Title 18 of RICO, and the

doctrine of pendant jurisdiction with respect to causes of action for fraud and fraudulent concealment, negligent misrepresentation, breach of contract and conversion.

3. Venue lies within this district pursuant to the provisions of 18 U.S.C. Sec. 1965 (a) since the Defendants, Eugene M. Kagan, Esquire, Jack Heflin, and E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel & Falcetta transact their affairs in the State of Connecticut and are found in the State of Connecticut.

4. With respect to Country Club Associates, venue lies within

this district since it has agents and principals in Connecticut, Massachusetts, and Florida and transacts business in those states.

5. With respect to East Street Mall Associates venue lies in this district since it has agents within the state of Connecticut and principals within the states of Connecticut, Massachusetts and Florida.

6. With respect to Interstate Regional Shopping Centers, Ltd., venue lies within this district since it has agents in the State of Connecticut and Florida and transacts its affairs in the states of Connecticut, Massachusetts, Vermont, New Hampshire and New York.

7. With respect to Defendants Harland Shapiro and Bertram Robinson venue lies in this district as both are residents of Massachusetts and the Plaintiff is a resident of Connecticut.

8. With respect to VSR Associates venue lies in this district as the principals and agents have transacted their business in Connecticut, Massachusetts, New Hampshire, and Vermont.

9. With respect to Defendant Allen M. Heflin, venue lies in this district since he has transacted his affairs in the State of Connecticut and he is found in the State of Florida.

COUNT I

1. At all relevant times, Interstate Regional Shopping Centers, Ltd. was an enterprise engaged in/and the activities of which affected interstate and foreign commerce.

2. At all relevant times, Country Club Associates was an enterprise engaged in/and the activities of which affected interstate and foreign commerce.

3. At all and relevant times East Street Mall Associates was an enterprise engaged in/and the activities of which affected

interstate and foreign commerce.

4. At all relevant times, co-schemer Eugene M. Kagan, was attorney for Country Club Associates and a 33 1/3% partner therein.

5. At various relevant times, co-schemer Eugene M. Kagan was attorney for East Street Mall Associates enterprise and also 33 1/3% principal partner and owner therein.

6. At all relevant times, co-schemer Eugene M. Kagan was attorney for and also 33 1/3% principal partner in Interstate Regional Shopping Centers, Ltd. enterprise.

7. At all relevant times, co-schemer Allen M Heflin was a partner and owner of 33 1/3% of the Country Club Associates enterprise with co-schemer Jack Heflin as his agent and son.

8. At all relevant times, co-schemer Allen M. Heflin was a partner for 33 1/3% in the enterprise East Street Mall Associates with co-schemer Jack Heflin as his agent and son.

9. At all relevant times, co-schemer Allen M. Heflin was a partner for 33 1/3% in the enterprise Interstate Regional Shopping Centers, Ltd., with co-schemer Jack Heflin as his agent and son.

At various relevant times, co-schemer Eugene M. Kagan was attorney for Rockingham Mall Associates and for George Vakalis and Bertram Robinson.

At all relevant times, co-schemer Bertram Robinson was 16.6% partner in the enterprise East Street Mall Associates.

At various relevant times, co-schemer Harland Shapiro was a 16% partner in Rockingham Mall Associates with members of Hunneman Company consisting of 13 members.

At all relevant times, Vakalis, Shapiro and Robinson were 1/3 each partners in the partnership

enterprise known as VSR Associates.

14. At various relevant times Attorney Eugene M. Kagan was attorney for various VSR matters including Wornat Development Corporation, Derby, Vermont and other miscellaneous matters.

15. At various relevant times, co-schemer Attorney Eugene M. Kagan was also attorney for Bertram Robinson for CBT foreclosure actions, in addition to acting as his personal bankruptcy legal adviser during the Rockingham Mall expansion period.

16. At all relevant times, the plaintiff, George Vakalis, was a

general partner of 33 1/3% of Country Club Associates.

At all relevant times, the Plaintiff, George Vakalis, was a general partner of 20% interest in East Street Mall Associates.

At all relevant times, the Plaintiff, George Vakalis, was a general partner of Rockingham Mall Associates with an interest of 16.67% to eventual 50% interest at a later date with remaining 50% interest owned by co-schemer Bertram Robinson.

At various relevant times, the Plaintiff, George Vakalis, was a partner in VSR Associates.

20. At all relevant times, various employees and agent of the Defendant, Eugene M. Kagan and others known hereinafter referred to collectively as "Co-schemers," known and unknown, acting within the scope of their authority, participated in the activities which are subject matter of this RICO action including Attorney Kagan's bookkeeper, Ms. Rene Holden, as co-schemer and co-schemer E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel & Falcetta.

21. At all relevant times, co-schemer E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel & Falcetta was personal accountant for Eugene M. Kagan, Attorney and his firm (Spitz, Sullivan,

Wachtel and Falcetta) and co-schemer for Allen M. Heflin.

22. At all relevant times, co-schemer E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel & Falcetta was accountant for Country Club Associates enterprise and continues as accountant at present.

23. At all relevant times, co-schemer E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel & Falcetta was accountant for East Street Mall Associates and continues as accountant at present.

24. At various relevant times, co-schemer E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel &

Falcetta was accountant for Rockingham Mall Associates for the period 1975-1981 until terminated for overt actions.

25. At all relevant times, co-schemer E. Reuel Stoltz, CPA Spitz, Sullivan. Wachtel & Falcetta was accountant for Interstate Regional Shopping Centers, Ltd., under the guidance of co-schemer Eugene M. Kagan.

26. At various relevant times, Shawmut First Bank, (herein referred to as Shawmut Bank) was a lender located in Springfield, Massachusetts, that loaned monies to developer George Vakalis for Country Club Associates and East Street Mall

Associates, shopping center projects.

27. At all relevant times, co-schemer Eugene M. Kagan was personal Attorney and partner of co-schemer Allen M. Heflin and co-schemer Jack Heflin on various other matters including the Society for Savings Office and commercial complex in West Hartford, Conn.

28. At various times, co-schemer Eugene M. Kagan placed properties into his wife's name, Elaine G. Kagan.

29. At various times co-schemer Allen M. Heflin placed properties into his son's name, co-schemer Jack Heflin and into

the business names, Hefbern, Inc., and Keystone Enterprises.

30. On or about mid 1975 and during 1976 and 1977 through December on 1980 and thereon to the present in the District of Connecticut, the District of New York, the District of New Hampshire, the District of Vermont and elsewhere, the Defendant Eugene M. Kagan, Allen M. Heflin, Jack Heflin, E. Reuel Stoltz, Spitz, Sullivan, Wachtel & Falcetta, Bertram Robinson, and Harland Shapiro acting through various co-schemers, known and unknown to the Plaintiff and his counsel unlawfully and willingly conducted the affairs of East Street Mall Associates, Country

Club Associates, Interstate Regional Shopping Centers, Ltd., Rockingham Mall Associates, and VSR Associates through a pattern of racketeering activity to wit two or more acts under the provisions of Title 18, United States Code, Sections 1341, 1343; 18 U.S.C. 1964 (c) (1976); 18 U.S.C. 1962 (a)(1976); 18 U.S.C. 1962 (b) (1976); 18 U.S.C. (d) (1976); 18 U.S.C. 1961 (4) (enterprise); 18 U.S.C. 1952 (1976); and 18 U.S.C. 1951 (1976) (Hobbs Act) as specified in paragraphs below.

1. Commencing in or about July, 1977, and continuing through in or about December, 1980, the Defendant Attorney Eugene M.

Kagan, acting through the various co-schemers including Allen M. Heflin, Jack Heflin, Bertram Robinson, E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel & Falcetta devised and intended to devise a scheme:

a. to defraud the Plaintiff developer George Vakalis using his real estate development expertise in connection with the development of shopping centers throughout New England and New York state and;

b. to make a concerted effort with co-conspirator and co-schemers in a criminal conspiracy to take all of

his Caldor Shopping Center projects and to bankrupt him by a continual conspiracy and on-going fraud;

c. to embezzle money and property from the Plaintiff developer, George Vakalis by continuous means of false representation, threats, fraudulent actions as more specifically set forth in paragraphs below.

32. It became part of the scheme that on or about July, 1977, the Defendant Eugene M. Kagan, Esquire, learned of a proposed shopping center development being worked on by George Vakalis in Westfield,

Massachusetts. Eugene M. Kagan learned that financing was needed for the project. He then informed George Vakalis that he could obtain financing from a substantial source, Allen M. Heflin.

33. It was part of the scheme that the Defendant Attorney Eugene M. Kagan later sought and obtained George Vakalis' agreement that Allen M. Heflin's son, Jack Heflin, would be substituted as named partner, however, that Allen M. Heflin would be "silent partner" and continue as source of needed financing for this and other projects worked on under the subsequent partnership set up known as Interstate Regional Shopping Centers, Ltd.

34. It was further part of the scheme that commencing in July-August of 1977 that the Defendant Attorney Eugene M. Kagan asked George Vakalis to extend their relationship into other projects for shopping center developments in the partnership enterprise mentioned in paragraph four known as Interstate Regional Shopping Centers, Ltd. Attorney Kagan would be a one third partner with Allen M. Heflin and Vakalis as one third general partners each on all future projects of the enterprise.

35. It was further part of the scheme that co-schemer Eugene

M. Kagan would be attorney for each project and receive legal fees in addition to his equity interest; and it permitted Kagan to exercise control and to mastermind the tricks, schemes and fraud acts of the criminal conspiracy of the various enterprises.

36. It was further part of the scheme that the Defendants Eugene M. Kagan and Allen M. Heflin offered to put up all equity and monies necessary to finance such projects if Plaintiff, George Vakalis would agree to do the development work and to expend the time and effort in locating and putting together shopping center developments, which offer was accepted.

37. It was further part of the scheme in October of 1977 when the Westfield project became known as East Street Mall Associates with ownership interests to George Vakalis, Eugene M. Kagan, Bertram Robinson, and Jack Heflin individual and as agent, servant or employee of Allen M. Heflin.

38. In furtherance of this scheme Eugene M. Kagan continued to induce George Vakalis and through meetings to expend time and effort and monies in establishing the Interstate Regional Shopping Centers, Ltd. enterprise as a well financed and highly reputable development

company for shopping center development. On December, 1977, George Vakalis submitted a list to the partners of Interstate Regional Shopping Centers Ltd. of more than twenty development potential locations. Said list also indicated some possible interested anchor tenants as a result of his efforts on behalf of the partnership.

39. It was further part of the scheme that during the development of East Street Mall Associates that Bertram Robinson refused to do any work on the project due to an alleged conflict of interest.

40. It was further part of the scheme that the Defendant Eugene

M. Kagan refused to continually show the financial records regarding partnership financial matters for the Westfield, Massachusetts/East Street Mall Associates project through his bookkeeper, Ms. Rene Holden and E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel & Falcetta Kagan's and the Heflin's personal accountant.

41. It became further part of the scheme in that co-schemer Eugene M. Kagan was acting as legal counsel for Vakalis and Robinson on an independent project known as Rockingham Mall where he received substantial monies as fees, yet he acted to the detriment of the project by a

series of actions to continue his fraud and criminal conspiracy against Vakalis.

42. It became further part of the scheme 1977-1980 when Attorney Eugene M. Kagan spoke to George Vakalis on the telephone on almost a daily basis both local and interstate regarding these development projects to solve zoning, engineering and wetland problems on Westfield, Massachusetts and to do other work and obtain tenants for 27 other sites that Vakalis was working on for the Interstate Regional Shopping Centers, Ltd. partnership. As co-schemer Kagan was engaging Vakalis in this large undertaking he was acting to prevent the expansion

of Rockingham Mall for which he was counsel.

43. It was further part of the scheme when co-schemer Eugene M. Kagan introduced the Cooley and Allen Street project in Springfield, Massachusetts and prepared options obtained by Vakalis' work on the project and co-schemer Kagan then introduced co-schemer Allen M. Heflin as the joint venturer for another Interstate Regional Shopping Centers, Ltd. partnership known as Cooley Allen-Street Mall. This required approximately more than nine (9) months of negotiating by developer George Vakalis with the owner.

44. It became further part of the scheme when co-schemer Eugene

M. Kagan represented co-schemer Bertram Robinson individually and attempted to have Robinson file for personal bankruptcy while co-schemer Robinson was a 50% partner of Rockingham Mall, and a 16% partner of East Street Mall Associates, Plaintiff Vakalis acted with counsel to stop this action. Co-schemer Eugene M. Kagan had commenced his Overt Actions to bankrupt Vakalis with Rockingham Mall.

45. The above was part of co-schemer Eugene M. Kagan's plan to have co-schemer Bertram Robinson interject his son Marc Robinson into the East Street Mall project to protect the Westfield cash flow, while handling his

50% Rockingham Mall bankruptcy and thereby attempting to have all Rockingham Mall debts directed against Vakalis, after not representing him properly as counsel for Rockingham Mall. E. Reuel Stoltz, Spitz, Sullivan, Wachtel & Falcetta also at this time continued to refuse Vakalis any accountability regarding financial matters on the Westfield project. It was further part of the scheme that during this same period, co-schemer Eugene M. Kagan gained George Vakalis' confidence during various interstate trips to Massachusetts, Rhode Island, and New Jersey to gain more information regarding Vakalis' financial condition and

subsequently co-schemer Eugene M. Kagan forced open a sealed financial statement of George Vakalis' which was required to be sealed for a lender application for a construction loan on Country Club Associates.

46. During 1978 Plaintiff George Vakalis put together plans for a shopping center in Worcester, Massachusetts, which plans included the site, certain tenants, the site development, and the construction and site contractors. These efforts were done by Plaintiff Vakalis with the knowledge of co-schemers Eugene M. Kagan, Allen M. Heflin and Jack Heflin. Co-schemer Allen M. Heflin was to be the

financial backer of substance in all Interstate Regional Shopping Centers Ltd. partnership projects. Co-schemer Eugene M. Kagan was to provide legal work, and Plaintiff Vakalis was to provide the development expertise as the working partner in putting together various Interstate Regional Shopping Centers Ltd. projects.

47. It was further part of the scheme that commencing in April of 1979, that co-schemer Allen M. Heflin refused to provide further funding for the East Street Mall Associates project, and refused to sign the construction loan. These actions were contrary to all agreements upon which the

partnership was based. This enabled co-schemer Allen M. Heflin to obtain a 33 1/3% of East Street Mall Associates by acting as a lender only, and taking no risk as a partner or doing any work. Co-schemer Eugene M. Kagan was paid $33,000 dollars as a legal fee on the Westfield project and received 30% equity interest in the project also. This was part of the trick and scheme orchestrated by co-schemer Eugene M. Kagan to defraud Plaintiff Vakalis by obtaining his monies and properties, in addition to the trick described.

48. It was further part of the scheme to defraud general

partner George Vakalis that co-schemer Eugene M. Kagan with co-schemer Allen M. Heflin subsequently refused to provide partnership funding as originally agreed in George Vakalis' behalf; and as a consequence, Vakalis was forced to make capital contributions in addition to the costs of his original obligations of development sweat efforts and expertise to the partnership. Co- schemer Eugene M. Kagan then demanded monies on all projects, and continually refused to pay George Vakalis any expenses whatsoever and eventually refused payment of his $150,000 development fee as agreed in writing and to further refuse to pay George Vakalis his share of

the cash flow in excess of $3,000,000.

49. It was further part of the schedule on March 15, 1980, when co-schemer Eugene M. Kagan, using his own accountant co-schemer E. Reuel Stoltz, Spitz, Sullivan, Wachtel & Falcetta to demand final payment of $24,471 from George Vakalis that co-schemer Eugene M. Kagan and co-schemers Allen M. Heflin and Jack Heflin used co-schemer Bertram Robinson to hold up Vakalis' hypothication approval for payment of the $24,471 as part of the trick and scheme to defraud. Co-schemer Eugene M. Kagan then, as further part of the scheme, demanded from general partner George Vakalis

all monies not then due amounting to $91,000.

50. It was further part of the scheme that co-schemer Eugene M. Kagan met with co-schemer Bertram Robinson, Allen Heflin, and Jack Heflin and illegally demanded all monies on the Country Club project or else he (co-schemer Eugene M. Kagan) would not accept final payment on the Westfield project.

51. Plaintiff Vakalis made arrangements at the Shawmut Bank by giving as collateral both East Street Mall Associates cash flow and the Country Club Associates cash flow. He offered Shawmut Bank his interest and cash flow for a

$121,000 note. This amounted to approximately $1,450,000 as collateral for the note. Vakalis was forced into this position by co-schemers Eugene M. Kagan and Allen M. Heflin and Jack Heflin working with co-schemer Bertram Robinson.

52. It was further part of the scheme when the monies were paid and Shawmut Bank had absolute assignment of the collateral that unbeknown to Vakalis that Shawmut Bank then required his wife, Mary Vakalis, to sign on the shopping center notes in addition to his own signature and the unusual collateral requirements of $1,450,000. This was part of the co-schemers plan to force Vakalis and his

family out of their home by withholding Vakalis' monies and cash flow from the Country Club project.

53. It was further part of the scheme that on and during 1980, co-schemer Bertram Robinson created miscellaneous disputes simultaneously with co-schemer Eugene M. Kagan and co-schemer Harland Shapiro. Co-schemer Robinson refused to sign agreements to pay $45,000 to plaintiff Vakalis as agreed on other partnership holdings with co-schemer Harland Shapiro. As a result Vakalis not only lost monies but also his interest.

54. It was further part of the scheme when co-schemer Robinson,

to assist co-schemer Eugene M. Kagan, refused to sign papers prepared by counsel for the sale of land in Derby, Vermont. It was later discovered he had borrowed against the property in Derby, Vermont, and refused to take the liens off. After this was resolved, co-schemer Robinson again refused to sign and further caused disputes with Security National Bank and Trust, one of the other partners. Co-schemer Robinson's disputes were part of the fraud against Vakalis.

55. It was further part of the scheme that co-schemer Robinson, acting with co-schemer Shapiro, created additional disputes over

sales of other properties, including a 26 acre Wornat Development property in Rockingham, Vermont, which later became a major scheme against Vakalis.

56. It was further part of the scheme in April of 1980, that Rockingham Mall, a $5.4 million dollar mall, was put into involuntary bankruptcy for only $5,000. This involved a $14,000 third mortgage by a group known as Hunneman. By March of 1980, Plaintiff Vakalis hired Widett Slater and Goldman to create a Chapter 11 reorganization and to prevent personal bankruptcy by obtaining a joint-venture partner and entering into a plan

for reorganization. The Country Club project was being completed during 1980. Co-schemer Eugene M. Kagan, former Attorney for Rockingham Mall, was determined to bankrupt Vakalis with this Mall.

57. It was further part of the scheme that during the Chapter 11 period of Rockingham Mall co-schemer Robinson wrote a letter to defend the malpractice actions of Attorney Eugene M. Kagan in an attempt to protect co-schemer Eugene M. Kagan from a 205A of his records reference Rockingham Mall, and his alleged implications with the involuntary bankruptcy thereto with Hunneman's attorneys.

58. It was further part of the scheme that co-schemer Robinson and co-schemer Harland Shapiro went to Westbank and Trust in 1980, and attempted to influence the bank to call in Vakalis' note although they had no connection with this note.

59. It was further part of the scheme that co-schemer Robinson and former counsel Eugene Berman of East Street Mall Associates went to Frank Barrett, Vice President of Shawmut Bank, to attempt to have Vakalis' shopping center note of $121,000 called in. This was another defamation act of damage to Vakalis by co-schemer Bertram Robinson.

60. It was further part of the scheme during the East Street Mall Associates and Country Club Associates lawsuit that co-schemer Robinson became active with co-schemer Harland Shapiro to call one and several notes in on Vakalis on various land holdings with Shapiro and Robinson on VSR Associates holdings.

61. It was further part of the scheme during the development of the East Street Mall Associates, and Country Club Associates projects, that co-schemers Bertram Robinson and Harland Shapiro directed lenders against Vakalis' wife Mary Vakalis in an attempt to block any efforts by

Vakalis' wife to obtain any financing, and ruin her credit. An improper attachment was placed against George Vakalis in all of Barnstable County, Cape Cod area, in an effort to destroy George Vakalis' credit and his wife's credit, and attempted to create an attachment against his wife's property at Cape Cod, Massachusetts. This was a VSR note hold in the names of George Vakalis, and co-schemers Harland Shapiro and Bertram Robinson.

62. It was further part of the scheme when co-schemer Robinson and co-schemer Harland Shapiro had a Donatelli second mortgage lien placed against Vakalis' residence in Suffield,

Connecticut, even though the residence was in his wife's name for a number of years and not a business asset of Vakalis. To create further harassment, Mrs. Vakalis was sued in Connecticut courts and her credit damaged extensively with a $25,000 dollar attachment. Co-schemer Robinson was attempting to force Vakalis into paying the entire Donatelli debt.

63. It was further part of the scheme that early in 1983, co-schemer Shapiro and co-schemer Robinson placed attachments on commercial land in Fall River, Massachusetts, of which Vakalis was 50% owner and attempted to have a sheriff's sale of his 50% value at approximately $100,000

dollars, for $20,000 dollars to a selected buyer undisclosed. The Court allowed Vakalis to pay his one third share.

64. It was further part of the scheme that co-schemer Shapiro filed a law suit against plaintiff Vakalis for monies not owed by Vakalis, but by co-schemer Robinson and failed to account for monies that in fact were owed to Vakalis by both co-schemer Shapiro and co-schemer Robinson. Co-schemer Shapiro, again attached Vakalis' holdings in the above mentioned Fall River, Massachusetts, property.

65. It was further part of the scheme that during 1977, 1978, and 1979, co-schemer Robinson

would meet Vakalis on the pretense of a meeting for East Street Mall Associates matters, and proceed to tell him that he met with co-schemer Eugene M. Kagan and that co-schemer Kagan and co-schemers Allen M. Heflin and Jack Heflin were attempting to oust Vakalis out of both properties.

66. It was further part of the scheme in that co-schemer Robinson asked for monies in the Chapter 11 proceedings of sale of Rockingham Mall assets for two million dollars above the mortgage to Denitex International. Co-schemer Robinson had in addition requested monies from a New York Broker and in addition,

requested payment of approximately an additional $600,000.00 from Denitex International. This resulted in a loss of the sale that was under contract for two million dollars above the mortgage on Rockingham Mall Shopping Center. Rockingham Mall Chapter 11 Trustee was advised of this by Vakalis and his counsel. This action was a continuance of his co-schemer actions wherein during 1983 co-schemer Robinson had refused to respond to a joint venture proposal from Simon Konover, one of the nations 50 largest developers, to reorganize Rockingham Mall in a joint venture. Denitex International refused to go forward due to Robinson's

bizzare actions and demands and Developer Konover also declined to move forward for similar reasons of Robinson's failure to cooperate.

67. It was further part of the scheme that co-schemer Eugene M. Kagan on or about August 10, 1979, created disputes and delays while preparing the Country Club partnership agreement for the Interstate Regional Malls Ltd. partnership for a long period of time. Finally, at the signing of the above agreement, co-schemer Eugene M. Kagan, acting as Attorney for Vakalis, and the partnerships Country Club Associates and Interstate Regional Shopping Centers, Ltd.,

threatened Vakalis with loss of the project in Worcester unless Vakalis waived his $35,000 origination fee that was completely agreed to by co-schemer Eugene M. Kagan and fully disclosed. Co-schemer Eugene M. Kaqan then told Vakalis that he and co-schemer Jack Heflin and Allen Heflin would force him out of the project unless general partner Vakalis gave up his $35,000.

68. It was further part of the scheme that during 1977, 1978, 1979 and 1980, that co-schemer E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel & Falcetta continually withheld all financial accountability per co-

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schemer Eugene M. Kagan's instructions on East Street Mall Associates and Country Club Associates. This was in breach of their fiduciary and contractual obligations as part of the scheme to defraud Vakalis out of his monies and shopping center interests.

69. It was further part of the scheme and the criminal conspiracy that on or about December 1978 that co-schemer E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel & Falcetta prepared improper papers on Rockingham Mall to create a suspicious discrepancy against Vakalis and to cause harassment. Co-schemer Robinson aided in this harassment also at

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this time. Lists of checks were improperly prepared to discredit Vakalis. There was no discrepancy; it was a fraud trick.

70. It was further part of the scheme that E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel & Falcetta, handled all financial records commencing in 1975 of Rockingham Mall and continuing to June 23, 1980, when he was terminated by Vakalis for refusing to prepare final tax returns for Rockingham Mall and subsequently charging an exorbitant fee for said work in an extortion type tactic, when the tax returns were required at a critical time in the Chapter 11 proceedings.

71. It was further part of the scheme that during the development of Country Club Associates project co-schemer Eugene M. Kagan arranged for authorization to sell 50% of the deal to raise the equity monies; in this matter he had commission agreements for himself and co-schemer Robinson was invited to participate. Co-schemer Eugene M. Kagan at no time would reveal his client. This was one of Kagan's many tricks and games to defraud and to create false work projects.

72. It was further part of the scheme that co-schemer Eugene M. Kagan acting as partner and

counsel for East Street Mall Associates made a demand of $90,000 each from Vakalis and co-schemer Bertram Robinson. This was done to force a contract change with an amendment/addendum in the East Street Mall Associates deal so that he could in the future demand monies at any time, subject only to his whim.

73. It was further part of the scheme that on November 27, 1979, Eugene M. Kagan demanded a power of attorney from Vakalis' attorney to guaranty payment of Vakalis' $150,000.00 fee for development expertise via separate addendum. Co-schemer Eugene M. Kagan was concealing his actions to control the

management and financial matters in an attempt to shut/stonewall Vakalis out of the partnership affairs so that he could continuously demand money of Vakalis indiscriminately, also acting with co-schemers Allen M. Heflin and Jack Heflin. Without an accounting or ever seeing the books, Vakalis never knew what monies were ever necessary at all. Yet with the addendum schemer Eugene M. Kagan extracted, he was free to jolt/squeeze Vakalis at will to force him out of the partnerships as part of the trick and fraud plan. Co-schemer Eugene M. Kagan further refused to terminate this instrument.

74. It was further part of the scheme that co-schemer Eugene M. Kagan began interfering with leasing of stores that Vakalis was doing on Country Club Associates. Although one major interference was with Iandoli Supermarkets, he had nearly caused a lawsuit with Aries Tac by cancelling their lease on the final hour under highly suspicious circumstances. In the case of Archer Kent, co-schemer Eugene M. Kagan attempted to delay the lease for two years.

75. It was further part of the scheme that co-schemer Eugene M. Kagan took control of negotiations on the major supermarket - Iandoli - that

Vakalis was working on, and concealed said negotiations from Vakalis for a prolonged period of time. Vakalis had obtained the letter of intent for supermarket lease for the partnership. This was part of the scheme to avoid ever paying the $150,000.00 development fee as co-schemers Eugene M. Kagan and the Heflins had placed an additional requirement in the contract that a certain square footage would have to be leased and occupied before Vakalis' fee could be considered earned and payable so by withholding lease negotiations up until he could force Vakalis out of the Worcester project - he would never have to pay the $150,000.00 development fee. Co-

schemer Eugene M. Kagan had delayed and concealed the Iandoli Supermarket transactions forcing Vakalis to negotiate with a large number of other markets without knowing that Iandoli Market was committed.

76. It was further part of the scheme that co-schemer Eugene M. Kagan attempted to shut Vakalis out of all aspects of the management and construction of the Country Club Plaza - thereby attempting to control all the variables to crate obstacles and demands upon Vakalis in a continuous attempt to squeeze him out of the deal and embezzle his money and property. Vakalis himself had

obtained the contractor Gralia Construction with a written contract agreement for the benefit of the partnership. Co-schemer Eugene M. Kagan then attempted to shut Vakalis out and prevent contact with Gralia Construction. It was in this part of the scheme that co-schemer Eugene M. Kagan attempted to shut Vakalis out of all aspects of the management and construction of the Country Club Associates project after Vakalis had obtained the contractors.

77. It was further part of the scheme during the development of the Country Club Associates that co-schemer Eugene M. Kagan split the Country Club project into

two phases: requiring additional legal work, delay, and a second lender at over 14%. In order to cover and conceal this scheme, co-schemer Eugene M. Kagan made concentrated efforts to force an agreement from Vakalis.

78. It was further part of the scheme during the development of the Country Club project for co-schemers Eugene M. Kagan, Allen M. Heflin, and Jack Heflin to exclude the partner Vakalis from participation in the management of the partnership or any of the financial matters.

79. It was further part of the scheme during the development of East Street Mall Associates that co-schemer Eugene M. Kagan

caused Aecon Construction Company to file suit against all partners for his construction funds. Co-schemer Eugene M. Kagan had arranged plausible disputes and used the incident for delay exposing the partnership to a $450,000.00 liability. This was another trick in the scheme.

80. It was further part of the scheme that during the development of East Street Mall Associates co-schemer Eugene M. Kagan, Jack Heflin, and Allen M. Heflin sold loam for $20,000.00 - $25,000.00 and refused to account for this sum to the partnership as did co-schemer E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel &

Falcetta. This resulted in a lawsuit of Solitario vs. the partners for breach of contract by the partnership. This was caused by co-schemer Eugene M. Kagan and co-schemer Jack Heflin. The Solitario suit was settled but the $20,000.00 has never been accounted for. This was another trick in the scheme and it cost the partnership an additional $33,000.00 to settle.

81. It was further part of the scheme that co-schemer Eugene M. Kagan, Jack Heflin, and Allen M. Heflin failed to provide proper accounting of funds in the Country Club Associates and East Street Mall Associates projects and continued to fail to account for all monies in the

partnership. Co-schemer Eugene M. Kagan named co-schemer E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel & Falcetta, as recipient of Country Club funds. This gave co-schemer Eugene M. Kagan financial control to conduct his criminal conspiracy.

82. It was further part of the scheme when Country Club Associates counsel, Joel P. Greene wrote a letter to tenant Carvel Ice Cream in behalf of co-schemer Eugene M. Kagan against George Vakalis.

83. It was further part of the scheme that during the 1979 - 1980 period of the development

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of the Interstate projects including Country Club and East Street Mall and Interstate Shopping Centers, Ltd., co-schemers Eugene M. Kagan, Jack Heflin and Allen M. Heflin had obtained in excess of $250,000.00 from Vakalis and in addition refused to pay him his $150,000.00 development fee, back rents, and monthly cash flow of $3,200,000.00 on the Country Club Associates project. This was the prime objective of co-schemer Eugene M. Kagan's racketeering actions and criminal conspiracy.

84. It was further part of the scheme that co-schemer Eugene M. Kagan used the Worcester Abstract Company to work with co-

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schemer State Mutual Life Assurance Company of America and further attempted to use Rackman, Sawyer and Brewster, former Rockingham Mall attorneys, to give a legal opinion on the improper title. When confronted, Rackman, Sawyer and Brewster withdrew as counsel. Co-schemer Eugene M. Kagan obtained another law firm to give an opinion on the improper title. Co-schemer Eugene M. Kagan was attempting to conceal his illegal actions with respect to invalid mortgage and improper title on Country Club Associates. He was covering and concealing this trick with co-schemer State Mutual Life Assurance Company of America.

85. It was further part of the scheme that co-schemer Eugene M. Kagan induced co-schemer State Mutual Life Assurance Company of America to become an active participant in the criminal conspiracy to defraud the Plaintiff Vakalis by accepting the illegal buy-out certificate presented by co-schemers Eugene M. Kagan and the Heflins to exclude the interests of Vakalis in an attempt to defraud him of his fees and $3,200,000.00 in cash flow from the Country Club project.

86. It was further part of the scheme when co-schemer State

Mutual Life Assurance Company of America delayed closing the loan until on or about April 5, 1982, hoping that Vakalis would be bankrupt with co-schemer Eugene M. Kagan and Bertram Robinson's manipulation of Rockingham Mall and the Chapter 11 scenario.

87. It was further part of the scheme that on or about July of 1980 co-schemer Jack Heflin sued George Vakalis and Shawmut Bank after receiving Vakalis' $91,000.00 in full payment of all his notes in Country Club Associates partnership with co-schemer Eugene M. Kagan. This was another trick while they were trying to force him out to take his monies and property.

88. It was further part of the scheme that co-schemers Eugene M. Kagan, Jack Heflin and Allen M. Heflin wrote to Shawmut Bank and Trust and attempted to take Vakalis' interest in Country Club Associates for two checks of $31,476.15 each to buy out his interest of $1,250,000.00 return for Vakalis' original capital contribution of $62,952.30. Kagan, Jack Heflin, and Allen M. Heflin wrote to Shawmut Bank and Trust and attempted to take Vakalis' interest in Country Club Associates for two checks for $31,476.15 each to buy out his interest of $1,250,000.00 return for Vakalis' original capital contribution of $62,952.00.

89. In furtherance of the scheme to defraud, co-schemer Eugene M. Kagan with co-schemer Jack Heflin acting for his father, co-schemer Allen M. Heflin, called a meeting of the Country Club Associates partnership on August 11, 1980, to demand $35,736.66 and voted themselves the right to purchase his shares for his own monies of $62,952.30. Plaintiff Vakalis filed a letter of protest with the co-schemer advising of the illegality of the action and requested time. This scheme and device utilized by the Defendants and co-schemers Kagan and the Heflins was to conceal the debt of $150,000.00 development fees contractually owed to Vakalis and to defraud him out of his 33

1/3% general partnership share with cash income of $3,200,000.00 over the term of the leases for his own money of capital contributions of $62,952.30.

90. It was further part of the scheme on November 27, 1979, when co-schemer Eugene M. Kagan arranged for a document to be signed in the Country Club Associates partnership by himself and Vakalis outlining no liens or actions were to be taken because of disputes against Country Club Associates during the New York Life Loan until the date of closing of the loan.

91. In furtherance of the scheme to defraud and to obtain money and property from Plaintiff Vakalis by means of false promise, fraudulent pretenses, misrepresentation as described herein, co-schemer Eugene M. Kagan was preparing to discredit Vakalis with the lender New York Life while he was preparing for a power of attorney document to totally control Vakalis's interest and to keep him out of the management while shutting him out of all financial details. While Kagan was doing this he was obligating Vakalis as a general partner personally for $3.4 million dollars in construction monies. So the scheme was to squeeze Plaintiff Vakalis out of the deal after

they usurped his real estate expertise, but only after they used him to get the financing and any other integral element of the deal.

92. In order to deceive Vakalis further into entering into power of attorney agreement, co-schemer Eugene M. Kagan created further disputes to challenge Plaintiff Vakalis' $150,000.00 development fee.

93. While the negotiation scheme continued with co-schemer Eugene M. Kagan and Vakalis' counsel and an addendum was prepared to redefine the requirement for Vakalis' $150,000.00 fee which had been negotiated for Interstate Regional Shopping

Centers Ltd. for development sweat and put into Country Club Associates partnership to defer payment by co-schemer Eugene M. Kagan and Allen M. Heflin and Jack Heflin in their efforts to defraud Vakalis.

94. It was further part of the scheme to have Eugene M. Kagan as attorney for all matters so that he could control matters for his personal and the co-schemers Allen M. Heflin and Jack Heflin gain and to the detriment of general partner Vakalis. Co-schemer Eugene M. Kagan working with co-schemers Allen M. Heflin and Jack Heflin committed acts of racketeering in the following areas involving Vakalis' interests:

Rockingham Mall Associates

Wornat Development Corporation

VSR Associates

East Street Mall Associates

Interstate Regional Shopping Centers Ltd.

VSR Matters

Derby, Vermont

Rockingham, Vermont

Country Club Associates

Mary Vakalis' Home

State Mutual Life Assurance Company of America (Country Club Associates Lender)

New York Life Insurance (Country Club Associates Lender)

New England Mutual Life (Rockingham Mall Lender)

New England Merchants Bank (Rockingham Mall Lender)

The Hunneman Company and Counsel

With All Counsels of Vakalis

Tenants of all Shopping Centers

and so acted as agent, attorney, spokesman, and he began to use

this massive control of Vakalis' affairs and he subsequently prepared partnership agreements wherein he cited for Vakalis only, in the partnership agreement and the addendum for the development fee of $150,000.00 to create conditions of bankruptcy for Vakalis or death wherein Vakalis or his heirs received nothing and then forcefully manipulated movement of all Vakalis' affairs to create the bankruptcy that he placed in his contracts to orchestrate his criminal conspiracy.

95. In doing these fraud acts and continually withholding monies

from Vakalis, co-schemer Eugene M. Kagan breached his fiduciary and contractual obligations to Vakalis, the general partner, violated the above cited federal laws.

96. It was further part of the scheme by co-schemer Eugene M. Kagan and the co-schemers Allen M. Heflin and Jack Heflin to take all of these holdings for himself and the Heflins.

97. In the case of Taunton, Massachusetts, co-schemer Eugene M. Kagan demanded $100,000.00 up front and also had a dispute with the lender who was selling the shopping center. Co-schemer Eugene M Kagan held the project up for a long period of time and

even threatened to sue Caldor. When developer Vakalis received approval from his attorneys he moved into a joint-venture with developer Simon Konover. The project became a success with a Caldor lease and an expanded market. Developer Vakalis was forced to sell out due to legal pressure continued by co-schemer Eugene M. Kagan and co-schemers Allen M. Heflin and Jack Heflin. These actions cost Vakalis loss of another shopping center, namely, Taunton Plaza, a Caldor project of $1.500,000.00 of which he was a 25% partner.

98. In doing this scheme Eugene M. Kagan as co-schemer used all known co-schemers such as

Bertram Robinson, Harland Shapiro and other known and unknown co-schemers to accomplish this end.

99. It was further part of the scheme that co-schemer Bertram Robinson with co-schemer Harland Shapiro turned debt of VSR Associates against Vakalis alone, while co-schemer Eugene M. Kagan and co-schemers Allen M. Heflin and Jack Heflin withheld Vakalis' development fee of $150,000.00 and his cash flow from Country Club Associates of approximately $10,000.00 per month for 32 years to make certain he could not pay any debts or obtain any money. Co-schemer Eugene M. Kagan had been attorney for

various VSR matters and was coordinating the criminal conspiracy to deprive Vakalis of his Country Club equity by attempting to bankrupt him with VSR debts and with the Rockingham Mall Chapter 11 in addition to other actions cited in the above paragraph.

100. During these matters co-schemer Kagan with co-schemer Bertram Robinson also manipulated the Chapter 11 proceedings of the Rockingham Mall to further take action in their attempts to bankrupt Vakalis with Rockingham Mall debts and taxes in order to take his monies and properties. Although Rockingham Mall assets were finally sold in June, 1983, Bertram Robinson as co-schemer,

previously had refused to allow a 205A of Attorney Eugene M. Kagan, then Attorney for Rockingham Mall. In addition, co-schemer Robinson refused to cooperate on a number of sales and joint venture plans, and further requested monies from a potential buyer in violation of United States Bankruptcy laws. Co-schemer Eugene M. Kagan further contacted various attorneys and others known and unknown, to further the proceedings toward foreclosure against Plaintiff Vakalis.

101. It was further part of the scheme to defraud Vakalis out of his execution fee and to withhold monies from him that co-schemers Eugene M. Kagan, Allen

M. Heflin and Jack Heflin, and Bertram Robinson, and Harland Shapiro made various advances to Shawmut Bank, and to Shawmut's subsidiary, Wornat Development Corporation, in attempts to place the complete debt of a VSR note with Wornat Development Corporation and commenced a vexatious, and vicious assault upon Plaintiff Vakalis on a federal interpleader action and in three courts. This was done to keep Vakalis' execution money out of his hands. Co-schemer Shawmut Bank, and its subsidiary Wornat Development Corporation, including co-schemers Eugene M. Kagan, Allen M. Heflin and Jack Heflin, knowingly and willfully committed fraud upon the United States District Federal Court in

the above mentioned interpleader action against Vakalis to prevent him from his execution award that Vakalis had won via unanimous special Jury decision against Eugene Kagan, Allen M. Heflin, and Jack Heflin for fraud, and fiduciary breach on January 11, 1983, (copy attached).

102. Shawmut Bank and Trust acting through Wornat Development Corporation, its subsidiary, became a co-schemer and acted to further the scheme to defraud Vakalis of his shopping center holdings. Co-schemer Shawmut Bank, after agreeing to the shopping center loan of $121,000.00, with collateral

assignment of $1,250,000.00 from Country Club Associates, and further collateral of $200,000.00 from the East Street Mall project, requested that Vakalis' wife, Mary Vakalis, sign the note in addition. It was further part of the scheme to force Vakalis' wife, Mary Vakalis, to sign the note in addition to George Vakalis. It was further part of the scheme for Shawmut Bank and Trust to force a second mortgage on Mary Vakalis' home in addition to the $1,450,000.00 collateral of the two shopping centers, and further co-schemer Shawmut Bank charged Vakalis $6,140.28 in legal and other fees for placing a second mortgage on his wife's home in Suffield, Connecticut.

This was done in conspiracy with co-schemers Eugene M. Kagan, Allen M. Heflin, Jack Heflin, and Bertram Robinson to avoid placing an attachment for the $121,000.00 note against Country Club Associates property. Previously, attorney and co-schemer Eugene M. Kagan had suggested to Vakalis to place the above Suffield home in Mary Vakalis' name and co-schemer Eugene M. Kagan handled said transfer. It was further part of the scheme when co-schemer Shawmut Bank & Trust used its subsidiary Wornat Development Corporation to pursue Vakalis in Federal courts and State courts; in a malicious manner for a questionable debt which was beyond the statutes of

limitation and where said property was taken by foreclosure and no credit given to debt after foreclosure and where co-schemer Bertram Robinson and Harland Shapiro were not named in the suit or pursued, in addition to a number of other violations by Wornat and their attorneys, all to harass Vakalis and prevent him from collecting his jury award execution, while threatening to foreclose Mary Vakalis' home as part of the criminal conspiracy and trick. Co-schemer Shawmut Bank & Trust refused all efforts and communications to release the jury funds and permitting Vakalis to pay them. Although Vakalis has borrowed the monies and transmitted them to Country

Club Associates and East Street Mall Associates. Co-schemer Shawmut Bank and Trust refused to act on this shopping center collateral against the Defendants, and instead concentrated against Vakalis' wife, Mary Vakalis, and her home, as part of the scheme. Co-schemer Shawmut Bank and Trust had an absolute assignment of both shopping centers consisting of Vakalis' equities valued at $1,450,000.00 for their $121.000.00 note and while never utilizing these collateral assignments, they, in addition, wrote Vakalis stating that they did not recognize these assignments yet co-schemer Shawmut Bank and Trust never returned them to Vakalis thereby

locking up/controlling Vakalis' equity interest in the shopping centers and was collecting his cash flow from East Street Mall since 1980.

103. It was further part of the scheme when on August 26, 1982, co-schemer Harland Shapiro filed suit against Vakalis to attach Vakalis holdings in Fall River, Massachusetts. Co-schemer Harland Shapiro filed suit vs. Vakalis for monies that were also owed by Bertram Robinson on a note to block an impending sale to Merit Oil Company. He used a VSR attorney acting in conflict of interest. This was another action by co-schemer Bertram Robinson and Harland

Shapiro acting to harass Vakalis and block his funds as part of the major scheme to defraud and to bankrupt him by interferences in his business affairs.

104. It was further part of the scheme to defraud Vakalis out of all his existing shopping center projects and his on-coming projects when on or about January 14, 1982, by unknown means the residence of Mary Vakalis was entered into by unknown co-schemers while she and the family were out, who acted to set up a relatively new H.B. Smith Boiler for total pulsation or explosion. Due to extraordinary circumstances the plot failed. However, approximately four gallons of

oil had been placed in the boiler firing chamber on a sub-zero temperature day and the boiler was turned off. Turning the boiler on would have resulted in a flaming explosion of the entire residence housing two families with infants. All official authorities and technical inspections, including H.B. Smith Company, verified the circumstances that this could not have in any way occurred on its own or due to any boiler malfunction. The boiler had to be replaced due to oil saturation and extensive damage was done.

105. It was further part of the scheme to defraud as co-schemer Eugene M. Kagan used co-schemer

E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel & Falcetta as the accountant for all projects and enterprises including Interstate Regional Shopping Centers, Ltd., Country Club Associates, East Street Mall Associates. Co-schemer Eugene M. Kagan had recommended him originally to Vakalis for Rockingham Mall. Vakalis subsequently had hired him also for Rockingham Mall Associates initially. Co-schemer Eugene M. Kagan used co-schemer E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel & Falcetta not only to control all monies and records, but to take tricky actions against Vakalis and to refuse Vakalis any accountability whatsoever of the

millions of dollars floating through Country Club Associates and East Street Mall Associates accounts through tenant rents, construction loans and permanent financing. In addition, co-schemer E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel & Falcetta also acted to defraud plaintiff Vakalis while employed as Vakalis' accountant on Rockingham Mall Shopping Center; therefore, co-schemer E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel & Falcetta, breached his fiduciary and contractual obligations. Vakalis subsequently fired E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel & Falcerta from Rockingham Mall Associates.

106a. In furtherance of the scheme to defraud and obtain money and property from Plaintiff Developer, George Vakalis, by means of false and fraudulent pretenses, representations, promises, and actions as described in paragraphs above, and for the purpose of executing said scheme, the following of mail matter were knowingly caused to be delivered by the Postal Service according to the direction thereon, each in violation of Title 18, United States Code, Section 1341:

Racketeering Act No.	Approximate Date	Mail Matter	Co-schemers Involved
1.	8/13/79	Letter from Eugene M. Kagan, 1 Financial Plaza, Hartford, CT to Edward	Eugene M. Kagan Jack Heflin Allen M. Heflin

		Rogin, Esquire, 111 Pearl St., Hartford, CT	
2.	3/22/79	Letter Eugene M. Kagan, 1 Financial Plaza, Hartford, CT to Jack Heflin, 10 Crossroads Plaza, W. Hartford, CT, Bertram Robinson, 85 Blokland Dr., Longmeadow, MA	Eugene M. Kagan Jack Heflin Allen M. Heflin Bertram Robinson
3.	9/10/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT to George Vakalis, 111 Pearl St., Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
4.	10/15/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT to George Vakalis, 111 Pearl St., Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
5.	10/23/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT to George Vakalis, 111 Pearl St., Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
6.	10/30/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT to George Vakalis, 111 Pearl St., Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
7.	10/31/85	Eugene M. Kagan, 1 Financial Plaza,	Eugene M. Kagan Allen M. Heflin

		Hartford, CT to George Vakalis, 111 Pearl St., Hartford, CT	Jack Heflin
8.	10/31/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT to George Vakalis, 111 Pearl St., Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
9.	2/7/80	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT to George Vakalis, 111 Pearl St., Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
10.	5/27/80	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT to George Vakalis, 111 Pearl St., Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
11.	6/17/80	Country Club Associates, 1 Financial Plaza, Hartford, Ct, Jack Heflin, 10 Crossroads Plaza, W. Hartford, CT to George Vakalis, 111 Pearl St., Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
12.	6/25/80	Country Club Associates, 1 Financial Plaza, Hartford, Ct, Jack Heflin, 10 Crossroads Plaza, W. Hartford, CT to George Vakalis, 111 Pearl St., Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin

13.	6/27/80	Country Club Associates, 1 Financial Plaza, Hartford, Ct, Jack Heflin, 10 Crossroads Plaza, W. Hartford, CT to George Vakalis, 111 Pearl St., Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
14.	7/8/80	Country Club Associates, 1 Financial Plaza, Hartford, Ct, Jack Heflin, 10 Crossroads Plaza, W. Hartford, CT to George Vakalis, 111 Pearl St., Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
15.	8/26/80	Certificate by Eugene M. Kagan, 1 Financial Plaza, Hartford, CT and Jack Heflin, 10 Crossroads Plaza, W. Hartford, CT, to State Mutual Life Insurance Company, Lincoln St., Worcester, MA	Eugene M. Kagan Allen M. Heflin Jack Heflin
16.	8/13/80	Law Firm - Day, Berry & Howard, 1 Constitution Plaza, Hartford, CT, to Shawmut First Bank and Trust Company, 127 State St., P.O. Box 391, Springfield, MA	Eugene M. Kagan Allen M. Heflin Jack Heflin

17.	3/29/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT, to George Vakalis, 111 Pearl St., Hartford, CT, and Jack Heflin, 10 Crossroads Plaza, W. Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
18.	4/20/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT, Jack Heflin, 10 Crossroads Plaza, W. Hartford, CT, to George Vakalis, 111 Pearl St., Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
19.	4/20/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT, to George Vakalis, 111 Pearl St., Hartford, CT, and Bertram Robinson of 85 Blokland Dr., Longmeadow, MA	Eugene M. Kagan Allen M. Heflin Jack Heflin
20.	5/8/79	Aecon Inc. of Suffield Village, Suffield, CT to Jack Heflin, 10 Crossroads Plaza, W. Hartford, CT and Eugene M. Kagan, 1 Financial Plaza, Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
21.	5/23/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT, to	Eugene M. Kagan Allen M. Heflin Jack Heflin

		George Vakalis, 111 Pearl St., Hartford, CT and Bertram Robinson, 85 Blokland Dr., Longmeadow, MA and Jack Heflin, 10 Crossroads Plaza, W. Hartford, CT	Bertram Robinson
22.	5/25/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT to Jack Heflin, 10 Crossroads Plaza, W. Hartford, CT, George Vakalis, 111 Pearl St., Hartford, CT and Bertram Robinson, 85 Blokland Dr., Longmeadow, MA	Eugene M. Kagan Allen M. Heflin Jack Heflin
23.	6/1/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT to Bertram Robinson, 85 Blokland Dr., Longmeadow, MA and George Vakalis, 111 Pearl St., Hartford, CT, and Jack Heflin, 10 Crossroads Plaza, W. Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
24.	7/2/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT, to George Vakalis, 111 Pearl St., Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
25.	8/28/79	George Vakalis, 111 Pearl St., Hart-	Eugene M. Kagan Allen M. Heflin

		ford, CT, prepared by Eugene M. Kagan, 1 Financial Plaza, Hartford, CT	
26.	8/31/79	East Street Mall Associates, 1 Financial Plaza, Hartford, CT memo unsigned	Eugene M. Kagan Allen M. Heflin
27.	9/4/79	East Street Mall Associates, 1 Financial Plaza, Hartford, CT to	Eugene M. Kagan Allen M. Heflin
28.	9/17/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT, to George Vakalis, 111 Pearl St., Hartford, CT	Eugene M. Kagan Allen H. Heflin Jack Heflin
29.	9/11/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT, to George Vakalis, 111 Pearl St., Hartford, CT	Eugene M. Kagan Allen H. Heflin Jack Heflin
30.	10/15/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT, to George Vakalis, 111 Pearl St., Hartford, CT	Jack Heflin
31.	10/26/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT, to George Vakalis, 111 Pearl St., Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin

32.	10/30/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT, to Jack Heflin, 10 Crossroads Plaza, W. Hartford, CT, and George Vakalis, 111 Pearl St., Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
33.	10/30/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT, to George Vakalis, 111 Pearl St., Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
34.	10/31/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT, to George Vakalis, 111 Pearl St., Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
35.	3/21/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT, to Jack Heflin, 10 Crossroads Plaza, W. Hartford, CT, and George Vakalis, 111 Pearl St., Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
36.	3/15/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT, to Jack Heflin, 10 Crossroads Plaza, W. Hartford, CT, George Vakalis, 111 Pearl St., Hartford, CT and	Eugene M. Kagan Allen M. Heflin Jack Heflin

		Bertram Robinson, 85 Blokland Dr., Longmeadow, MA, Memorandum of Westfield Assoc.	
37.	3/22/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT, to George Vakalis, 111 Pearl St., Hartford, CT and Bertram Robinson, 85 Blokland Dr., Longmeadow, MA	Eugene M. Kagan Allen M. Heflin Jack Heflin
38.	4/20/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT, to George Vakalis, 111 Pearl St., Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
39.	4/20/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT, to George Vakalis, 111 Pearl St., Hartford, CT and Bertram Robinson, 85 Blokland Dr., Longmeadow, MA	Eugene M. Kagan Allen M. Heflin Jack Heflin
40.	5/16/79	Jack Heflin, 10 Crossroads Plaza, W. Hartford, CT to George Vakalis, 111 Pearl St., Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
41.	5/23/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT, to Jack Heflin, 10	Eugene M. Kagan Allen M. Heflin Jack Heflin

		Crossroads Plaza, W. Hartford, CT, George Vakalis, 111 Pearl Street, Hartford, CT and Bertram Robinson	
42.	7/2/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT, to George Vakalis, 111 Pearl St., Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
43.	9/4/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT, to George Vakalis, 111 Pearl St., Hartford, CT, and Bertram Robinson, 85 Blokland Dr., Longmeadow, MA	Eugene M. Kagan Allen M. Heflin Jack Heflin
44.	9/10/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT, to George Vakalis, 111 Pearl St., Hartford, CT, Jack Heflin, 10 Crossroad Plaza, W. Hartford, CT and Attorney Edward Rogin, 111 Pearl St., Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
45.	9/11/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT, to George Vakalis, 111 Pearl St., Hartford, CT, and Attorney Edward Rogin, 111	Eugene M. Kagan Allen M. Heflin Jack Heflin

		Pearl St., Hartford, CT, and Attorney Edward Rogin, 111 Pearl St., Hartford, CT	
46.	10/26/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT, to	Eugene M. Kagan Allen M. Heflin Jack Heflin
47.	10/23/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT, to George Vakalis, 11 Pearl Street, Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
48.	11/1/79	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT, to George Vakalis, 111 Pearl St., Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
49.	2/7/80	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT, to George Vakalis, 111 Pearl St., Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
50.	3/27/80	Law firm - Robinson Robinson and Cole, 799 Main Street, Hartford, CT, to Law Firm Day, Berry & Howard, 1 Constitution Plaza, Hartford, CT, transfer of $91,936.65, by George Vakalis, 111 Pearl Street, Hartford, CT, to Eugene M. Kagan, 1 Financial Plaza,	Eugene M. Kagan Allen M. Heflin Jack Heflin Bertram Robinson

		Hartford, CT, via his attorneys, with enclosure: Absolute Assignment of shares and cash flow to Shawmut Bank and Trust Co., 127 State St., P.O. Box 391, Springfield, MA	
51.	5/27/80	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT, to George Vakalis, 111 Pearl St., Hartford, CT, and Jack Heflin, 10 Crossroads Plaza, W. Hartford, CT, Demand Notice	Eugene M. Kagan Allen M. Heflin Jack Heflin
52.	6/5/80	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT - Memo to Country Club Assoc.	Eugene M. Kagan Allen M. Heflin
53.	6/6/80	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT - to George Vakalis, 111 Pearl St., Hartford, CT and Jack Heflin, 10 Crossroads Plaza, W. Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
54.	7/8/80	Country Club Assoc., 1 Financial Plaza, Hartford, CT to George Vakalis, 111 Pearl St., Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin

55.	6/17/80	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT and Jack Heflin, 10 Crossroads Plaza, W. Hartford, CT to George Vakalis, 111 Pearl St., Hartford, CT - Demand Notice	Eugene M. Kagan Allen M. Heflin Jack Heflin
56.	6/25/80	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT and Jack Heflin, 10 Crossroads Plaza, W. Hartford, CT to George Vakalis, 111 Pearl St., Hartford, CT - Demand Notice	Eugene M. Kagan Allen M. Heflin Jack Heflin
57.	3/17/80	Allen M. Heflin, 10 Crossroads Plaza, Hartford, CT, cc Eugene M. Kagan, Esq., Richard Lublin, Esq., Samuel Bailey, Esq., Thomas D. Gill, Esq.	Eugene M. Kagan Allen M. Heflin Jack Heflin
58.	7/21/80	Eugene M. Kagan, 1 Financial Plaza, Hartford, CT to Marc Robinson, 350E 30th Street, 4E N.Y.	Eugene M. Kagan Allen M. Heflin Jack Heflin Bertram Robinson
59.	7/17/80	Bertram Robinson, 85 Blokland Dr., Longmeadow, MA to George Vakalis, 111 Pearl St., Hartford, CT, cc Steve Gordon, Mark Berman, Widett Slater, etc.	Eugene M. Kagan Allen M. Heflin Jack Heflin Bertram Robinson

106b. In furtherance of the scheme to defraud and to obtain monies and properties from Plaintiff George Vakalis by means of false and fraudulent pretenses, representations, and promises as described in paragraphs 1 - 106 above, for the purpose of executing said scheme, the following signs, signals, and sounds were transmitted and caused to transmit by wire and radio communications in interstate and foreign commerce, each in violation of Title 18, United States Code, Section 1343:

Racketeering Act No.	Approximate Date	Commmunications Between	Co-schemers Involved
60.	3/3/78	Telephone Call - Bertram Robinson Longmeadow, MA/ George Vakalis Hartford, CT	Bertram Robinson Harland Shapiro

61.	5/31/79	Telephone Call - Bertram Robinson Longmeadow, MA/ George Vakalis Hartford, CT	Bertram Robinson
62.	6/31/79	Telephone Call - Bertram Robinson Longmeadow, MA/ George Vakalis Hartford, CT	Bertram Robinson Harland Shapiro
63.	7/30/79	Telephone Call - Eugene M. Kagan Hartford, CT/ George Vakalis Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
64.	8/10/79	Telephone Call - Jack Heflin Worcester, MA/ Eugene M. Kagan Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
65.	11/1/79	Telephone Call - Eugene M. Kagan Hartford, CT/ George Vakalis Hartford, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
66.	11/15/79	Telephone Call - Bertram Robinson Longmeadow, MA/ George Vakalis Hartford, CT	Bertram Robinson Eugene M. Kagan Allen M. Heflin Jack Heflin
67.	11/20/79	Telephone Call - Bertram Robinson	Bertram Robinson Eugene M. Kagan

		Longmeadow, MA/ George Vakalis Hartford, CT	Allen M. Heflin Jack Heflin
68.	1/9/80	Telephone Call - Bertram Robinson Longmeadow, MA George Vakalis Hartford, CT	Bertram Robinson Eugene M. Kagan Allen M. Heflin
69.	4/16/80	Telephone Call - Bertram Robinson Longmeadow, MA/ George Vakalis Hartford, CT	Bertram Robinson Allen M. Heflin Jack Heflin
70.	12/2/79	Telephone Call - Shawmut Bank Springfield, MA/ George Vakalis Hartford, CT	Eugene M. Kagan Bertram Robinson Allen M. Heflin
71.	1/3/80	Telephone Call - Bertram Robinson Longmeadow, MA/ George Vakalis Hartford, CT	Bertram Robinson Eugene M. Kagan Allen M. Heflin Jack Heflin
72.	1/17/80	Telephone Call - Harland Shapiro Swampscott, MA/ George Vakalis Hartford, CT	Harland Shapiro Bertram Robinson
73.	1/31/80	Telephone Call - Bertram Robinson Longmeadow, MA/ George Vakalis Hartford, CT	Bertram Robinson Eugene M. Kagan Allen M. Heflin Jack Heflin
74.	2/8/80	Telephone Call - Bertram Robinson Longmeadow, MA/ George Vakalis Hartford, CT	Bertram Robinson Eugene M. Kagan Allen M. Heflin Jack Heflin

75.	4/9/80	Telephone Call - Harland Shapiro Swampscott, MA/ George Vakalis Hartford, CT	Harland Shapiro Bertram Robinson
76.	1/24/81	Telephone Call - Frank Barrett - Shawmut Springfield, MA/ George Vakalis Hartford, CT	Shawmut Bank Jack Heflin Bertram Robinson Eugene M. Kagan Allen M. Heflin
77.	10/15/80	Telephone Call - Harland Shapiro Swampscott, MA/ George Vakalis Hartford, CT	Hartford, CT Bertram Robinson
78.	6/31/80	Telephone Call - Harland Shapiro Swampscott, MA/ George Vakalis Hartford, CT	Harland Shapiro Bertram Robinson Eugene M. Kagan E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel & Falcetta
79.	1/30/80	Telephone Call - R. Wayman Boston, MA/ George Vakalis Hartford, CT	Harland Shapiro Bertram Robinson Eugene M. Kagan E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel & Falcetta
80.	3/26/80	Telephone Call - Bertram Robinson Longmeadow, MA/ George Vakalis Hartford, CT	Bertram Robinson Eugene M. Kagan Allen M. Heflin Jack Heflin

81.	4/8/80	Telephone Call - Bertram Robinson Longmeadow, MA/ George Vakalis Hartford, CT	Bertram Robinson Eugene M. Kagan E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel & Falcetta
82.	4/16/80	Telephone Call - Bertram Robinson Longmeadow, MA/ George Vakalis Hartford, CT	Bertram Robinson Eugene M. Kagan
83.	6/8/80	Telephone Call - Harland Shapiro Swampscott, MA/ George Vakalis Hartford, CT	Harland Shapiro Bertram Robinson Eugene M. Kagan
84.	6/10/80	Telephone Call - Eugene M. Kagan Hollywood, FL/ Caldors Norwalk, CT	Eugene M. Kagan Allen M. Heflin Jack Heflin
85.	7/2/80	Telephone Call - Bertram Robinson Longmeadow, MA/ George Vakalis Hartford, CT	Bertram Robinson
86.	9/10/80	Telephone Call - Shawmut Bank Springfield, MA George Vakalis Hartford, CT	Shawmut Bank Eugene M. Kagan Bertram Robinson Allen M. Heflin Jack Heflin
87.	8/24/83	Telephone Call - Shawmut Bank Springfield, MA/ George Vakalis Suffield, CT	Shawmut Bank Wornat Development Corp. Eugene M. Kagan Allen M. Heflin

			Jack Heflin Bertram Robinson Harland Shapiro
88.	9/8/83	Telephone Call - Shawmut Bank Springfield, MA/ George Vakalis Suffield, CT	Shawmut Bank Wornat Development Corp. Eugene M. Kagan Allen M. Heflin Jack Heflin Bertram Robinson Harland Shapiro
89.	10/12/83	Telephone Call - Wornat Development Corp.-Shawmut Bank, Worcester, MA/ George Vakalis Suffield, CT	

106c. The transportation in interstate and foreign commerce of monies and other valuables in excess of $5,000.00 or more knowing the same to have been taken, were being taken as part of the fraud pursuant to the scheme described in the paragraphs above, each in violation of Title 18, United States Code, Section 2314:

Racketeering Act No.	Approximate Date	Commmunications Between	Co-schemers Involved
90.	7/18/78	Westfield Land Land Approvals for Caldor Value in Excess of $5,000 Transportion from Hartford, CT to Westfield, MA	Eugene M. Kagan Allen M. Heflin Jack Heflin Bertram Robinson
91.	6/19/79	Construction Loan $2,000,000.00 Street Mall Associates, Bay Bank Valley Trust Co. Transportation from Hartford, CT to Springfield, MA	Eugene M. Kagan Allen M. Heflin Jack Heflin Bertram Robinson
92.	11/25/79	Closing of Worcester Country Club construction loan $3.4 million Transportation from Hartford, CT to Worcester, MA	Eugene M. Kagan Allen M. Heflin Jack Heflin
93.	2/10/80	Deliver Iandoli Lease Country Club Assoc/Value in excess of $5,000.00 Transportation from Hartford, CT to Worcester, MA	Eugene M. Kagan Allen M. Heflin Jack Heflin
94.	8/11/80	Construction Loan Phase II State Mutual Ins. - Colonial Bank $2.1 million	Eugene M. Kagan Allen M. Heflin Jack Heflin

Transportation
from Hartford, CT
to Worcester, MA

107. It was further part of the scheme to defraud and to obtain monies and properties that co-schemer Eugene M. Kagan, while acting as attorney for the various enterprises, sent bills to and collected from developer Vakalis for his legal services while he was carrying on this scheme. Co-schemer Eugene M. Kagan billed and collected among others, the following fees from the enterprises indicated:

Eugene M. Kagan, Attorney for
Rockingham Mall Enterprise

a. September 1, 1979 - $5,018.09
b. September 4, 1979 - $ 350.00
c. January 11, 1979 - $ 300.00
d. May 1, 1980 - $8,814.64
e. July 2, 1979 - $4,811.23
f. February 1, 1980 - $1,904.40

Eugene M. Kagan, Attorney for VSR Enterprise matters, $1,745.00.

Eugene M. Kagan, Attorney for East Street Mall Enterprise - Approximately $38,000.00.

Eugene M. Kagan, Attorney for Country Club Associate Enterprise - Approximately $93,000.00 plus a $12,000.00 commission fee.

Miscellaneous Billings: Eugene M. Kagan, Attorney for Interstate Regional Shopping Centers, Ltd. Enterprise - In excess of $500.00.

With reference to Country Club Associates Shopping Center Vakalis made in 1979 and 1980 - cash investments totaling $62,952.00.

In 1979 additional cash investments made by Vakalis for Interstate Regional Shopping Center in the amount of $48,223.79 and in 1980, $27,101.32 for a total of $75,325.00.

In addition to other disbursements from the period of September 14, 1977, to February 3, 1978, disbursements totaling $5.188.00 and in 1981 disbursements totaling $45.457.06.

In addition, disbursements were made to Thomas F. Gill, Attorney, Day, Berry and Howard, of $45,984.00 ($91,936.65 -

$45,952.30). This represented total cash investments by Vakalis of $234,908.00. This does not represent other miscellaneous disbursements not listed here.

In addition, Vakalis had to expend legal fees in defense against co-schemers Eugene M. Kagan, Jack Heflin, Allen M. Heflin, Bertram Robinson, Harland Shapiro, of approximately $360,000.00, which was paid with estimated additional legal fees of $300,000.00 to be paid due to their overt actions.

108. It was further part of the scheme to defraud, trick, and deceive developer George Vakalis by promises, representations, and other fraud devices, utilized by co-schemer Eugene M. Kagan and other co-schemers known and unknown that the Chapter XI for reorganization of Rockingham Mall was being delayed, obstructed, and manipulated to turn Mall debts

solely against Vakalis. There were a number of obstructionist tactics during 1980 to present by co-schemer Bertram Robinson working with co-schemer Eugene M. Kagan acting to oppose any orderly resolution through various joint venture reorganization plans as described in above paragraphs. Co-schemer Bertram Robinson had demanded monies and other concessions from Denitex International, a buyer of the Rockingham Mall in Chapter XI. Said actions by co-schemer Bertram Robinson were concealed by various co-schemers from Vakalis. Other irregularities in the Chapter XI included the sale of the asset in June 1983 for $4,550,000.00 with

substantial payments to secured creditors and subsequent failure to file a reorganization plan to pay approximately $100,000.00 of unsecured creditors for months after the sale. In addition, there has been failure to give accurate accounting in spite of repeated requests by counsel in order to work out a reorganization plan. Although cash of approximately $300,000.00 remains on the books, a motion has been filed by the Trustee to consider conversion of the Chapter XI status to a Chapter 7. The objective of this scheme was to have Vakalis work on the Chapter XI for approximately three years and to block his efforts for a successful reorganization or

sale for a profit. Co-schemer Eugene M. Kagan, working with co-schemer Bertram Robinson and other known and unknown co-schemers were attempting to handle this Chapter XI to the detriment of Vakalis.

109. It was further part of the scheme commencing in 1977 and carried through the resent through utilization of the Interstate Regional Shopping Centers, Ltd. Enterprise, to defraud and to obtain monies and property from developer George Vakalis by means of false and fraudulent pretenses, representations and promises as described in paragraphs 1-108 above and for the purpose of executing said scheme. Co-

schemer Eugene M. Kagan acted with and through various co-schemers known and mentioned above and unknown. Co-schemer Eugene M. Kagan acting with co-schemers Allen M. Heflin, Jack Heflin, Bertram Robinson, Harland Shapiro, E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel & Falcetta and other co-schemers known and unknown attempted to drive developer George Vakalis out of the shopping center business by his series of fraudulent racketeering actions as described in the above paragraphs 1-108.

110. Through the aforedescribed pattern of racketeering activity, the defendants, Eugene

M. Kagan, Allen M. Heflin, Jack Heflin, and Bertram Robinson did acquire and maintain a monetary sum and value in Country Club Associates and in East Street Mall Associates properties totalling at least approximately $11,000,000.00 and including approximately three years of cash flow from 1979-1980 to present of approximately $84,000.00 per year from East Street Mall Associates and approximately $300,000.00 per year from Country Club Associates including other charges, interest, fees, and withdrawals since 1979 and 1980; thereby making such sums of money and properties subject to forfeiture pursuant to Title 18,

United States Code, Section 1964 (a)(c). In violation of Title 18, United States Code Section 1962 (a), (b), (c), (d).

Count 2

1. From at least as early as August of 1977 and continuing thereafter through the date of filing of this suit, in the District of Connecticut and elsewhere, the Defendants,

Eugene M. Kagan
Jack Heflin
Allen M. Heflin
E. Reuel Stoltz, CPA,
Spitz, Sullivan, Wachtel
& Falcetta
Bertram Robinson and
Harland Shapiro

unlawfully, willfully and knowingly did combine, conspire,

confederate and agree with each other and with other persons, known and unknown as outlined herein as "co-conspirators" to commit federal offenses against George Vakalis to wit, violations of Title 18, United States Code, Sections 1341, 1343, and 2314.

2. Paragraphs 1-36 and 37 through 110 of Count 1 of this suit are hereby incorporated by reference and realleged as though set forth in full herein as naming and stating the participants in and objects of, and the means by which the defendants named in this count and their co-conspirators known and unknown carried out and accomplished this conspiracy.

3. It was a part of this conspiracy that the Defendants and their co-conspirators unlawfully, willfully and knowingly would and did devise and intend to devise a scheme to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises and for the purpose of executing such scheme in attempting so to do; would and did cause to be placed in post offices and authorized depositories to be sent and delivered by the Postal Service and to be delivered by mail according to the directions thereon, mail matter, in violation of Title 18, United

States Code Section 1341; would and did cause to be transmitted by means of wire and radio communications in interstate and foreign commerce certain writings, signs, signals and sounds in violation of Title 18, United States Code, Section 1343; and, would and did transport and cause to be transported in interstate and foreign commerce money and other valuables of the value of $5,000.00 or more knowing the same to have been taken by fraud, in violation of Title 18, United States Code 2314.

4. It was further part of this conspiracy that the Defendants and their co-conspirators would and did undertake various

actions designed to conceal the existence, nature, and scope of this conspiracy and their participation therein.

Count 3

1. Paragraphs 1 through 36 and 37 through 110 of Count 1 of this suit are hereby incorporated by reference and realleged as though set forth in full herein.

2. On or about August 10, 1979, in the District of Connecticut and elsewhere the Defendants,

Eugene M. Kagan
Jack Heflin
Allen M. Heflin
Bertram Robinson
Harland Shapiro
E. Reuel Stoltz, Spitz, Sullivan, Wachtel & Falcetta

having devised and intending to devise the scheme to defraud and to obtain money and property from developer George Vakalis by means of false and fraudulent pretenses, representations and promises, and for the purpose of executing said scheme, transmitted and caused to be transmitted by wire communication in interstate commerce from Worcester, MA to Hartford, CT to wit, a telephone message to trick Vakalis out of his $35,000.00 origination fee by threatening a force out per co-schemer Eugene M. Kagan's scheme. (In violation of Title 18, United States Code, Sections 1343.)

Count 4

1. Paragraphs 1-36 and 37 to 110 of Count 1 of this suit are hereby incorporated by reference and realleged as though set forth in full herein.

2. On or about March 26, 1980, in the District of Connecticut and elsewhere, the Defendants:

Eugene M. Kagan
Jack Heflin
Allen M. Heflin
Bertram Robinson
Harland Shapiro
E. Reuel Stoltz, Spitz, Sullivan, Wachtel & Falcetta

having devised and intending to devise the scheme to defraud and to obtain money and property from developer and general partner George Vakalis by means of false and fraudulent

pretenses, representations and promises, and for the purpose of executing said scheme, transmitted and caused to be transmitted by wire communication in interstate commerce from Longmeadow, MA to Hartford, CT, writings, signs and signals, to wit, a telephone message to discuss fraudulent representations regarding payments for East Street Mall Associates and Rockingham Mall Associates. (In violation of Title 18, United States Code, Sections 1343.)

Count 5

1. Paragraphs 1-36 and 37-110 of Count 1 of this suit are hereby incorporated by preference and

realleged as though set forth in full herein.

2. On or about June 17, 1980, in the District of Connecticut and elsewhere, the Defendants:

Bertram Robinson
Eugene M. Kagan
Allen M. Heflin and
Jack Heflin

having devised and intending to devise the scheme to defraud and to obtain money and property from general partner George Vakalis by means of false and fraudulent pretenses, representations and promises and for the purpose of executing said scheme, knowingly caused to be delivered by the Postal Service to the home of George Vakalis according to the

direction thereon, mail matter, to wit, a letter prepared by the Defendant Eugene M. Kagan, Attorney and signed by co-schemer, Jack Heflin for co-schemer Allen M. Heflin in an attempt to default Vakalis for $35.000.00 while they were concealing the financial records and were attempting to avoid paying Vakalis his $150,000.00 development fee upon completion and to obtain this 33-1/3 income cash flow of $3,000,000.00. (In violation of Title 18 United States Code Section 1341.)

Count 6

1. Paragraphs and 37-110 of Count I of this suit are hereby incorporated by reference and

realleged as though set forth in full herein.

2. On or about June 25, 1980, in the District of Connecticut and elsewhere, the Defendants:

Eugene M. Kagan
Allen M. Heflin
Jack Heflin
Bertram Robinson
Harland Shapiro and
E. Reuel Stoltz, Spitz, Sullivan, Wachtel & Falcetta

having devised and intending to devise the scheme to defraud and to obtain money and property from general partner George Vakalis by means of false and fraudulent pretenses, representations and promises and for the purpose of executing said scheme, knowingly caused to be delivered by the Postal

Service to general partner, George Vakalis at his home address 1005 North Street, Suffield, Connecticut according to the direction thereon, mail matter to wit, a certified letter from co-schemer Eugene M. Kagan and co-schemers Jack Heflin and Allen M. Heflin advising that the construction loan is closing for Phase II of Country Club Associates Shopping Center on July 16, 1980, and that $175,714.94 is required to pay Allen M. Heflin's second mortgage. This trick involved calling the Heflin mortgage when it was in fact guaranteed continually by the construction loan with Colonial Bank and Trust of $2.1 million. Again, co-schemers Eugene M. Kagan,

Allen M. Heflin, and Jack Heflin working the the other co-schemers E. Reuel Stoltz, Spitz, Sullivan, Wachtel & Falcetta, and Bertram Robinson, continued their scheme to force Vakalis out of the shopping center by fraudulently calling co-schemer Allen M. Heflin's guaranteed second mortgage loan to obtain general partner George Vakalis $150,000.00 development fee and cash flow of more than $3,000,000.00 as his share in Country Club over the term of leases.

Count 7

1. Paragraphs 1-36 and 37 through 110 of Count 1 of this suit are hereby incorporated by reference

and realleged as though set forth in full herein.

2. On or about August 13, 1979, in the District of Connecticut and elsewhere the Defendants:

Eugene M. Kagan
Allen M. Heflin
Jack Heflin
E. Reuel Stoltz, Spitz, Sullivan, Wachtel & Falcetta and
Bertram Robinson

having devised and intending to defraud and to obtain money and property from general partner George Vakalis by means of false and fraudulent pretenses, representations and promises and for the purpose of executing said scheme, knowingly caused to be delivered by the Postal Service to Mr. Frank Barrett of

Shawmut Bank and Trust at 127 State Street, Springfield, MA, according to the direction thereon mail matter in the form of a letter from co-schemer Eugene M. Kagan's attorneys citing that co-schemer Eugene M. Kagan and co-schemer Jack Heflin had purchased general partner George Vakalis' interest on August 11, 1980 at 5:00 p.m. at a partnership meeting. Included with the letter were two checks: one from co-schemer Eugene M. Kagan for $31,476.15 and one from co-schemer Jack Heflin for $31,476.15. The Defendants did knowingly and willfully conceal and cover up by a trick scheme and devise the material fact as more fully set forth below.

3. Co-schemers Eugene M. Kagan and Jack Heflin and Allen M. Heflin were attempting to force general partner out for return of his own capital account of $62,952.30 and were attempting to conceal and cover up the existence of an agreement to pay Vakalis $150,000.00 because of his development efforts on Country Club and Interstate Regional S.C. Ltd. which he had earned in the Country Club project.

4. Again, utilizing this trick and device, the Defendants made the checks payable to George Vakalis and Shawmut.

5. General partner Vakalis refused to accept the checks and Shawmut

Bank returned them to the Defendants.

6. In this willfully concealed scheme, the Defendants attempted to obtain Vakalis' interest of 33-1/3 in Country Club with income of $3,000,000.00 and avoid paying him his development fee. (In violation of Title 18, United States Code, Section 1341.)

Count 8

1. Paragraphs 1-36 and 37 through 110 of Count 1 of this suit are hereby incorporated by reference and realleged as though set forth in full therein.

2. On or about July 17, 1980, in the District of Connecticut and elsewhere, the Defendants:

Eugene M. Kagan
Allen M. Heflin
Jack Heflin
Bertram Robinson and
E. Reuel Stoltz, CPA,
Spitz, Sullivan,
Wachtel and Falcetta

having devised and intending to devise the scheme to defraud and to obtain money and property from George Vakalis by means of false and fraudulent pretenses, representations and promises and for the purpose of executing said scheme, knowingly caused to be delivered by the Postal Service to Plaintiff, George Vakalis, at his office address, 111 Pearl Street, Hartford, CT 06103, according to the direction thereon, mail matter,

to wit; a letter from co-schemer Bertram Robinson expressing his concern and objection to arrangements agreed to by Widett, Slater & Goldman on to depose Attorney Eugene M. Kagan in a 205A deposition procedure as required in the Chapter 11 proceedings for Rockingham Mall Associates. Co-schemer Bertram Robinson was aware of co-schemer Eugene M. Kagan's actions as counsel for Rockingham Mall and had engaged in a number of tricks with co-schemer Eugene M. Kagan including his attempted sale of his share to Plaintiff George Vakalis for his $80,000.00 of defaulted debt at Shawmut Bank and also his actions with co-schemer Eugene M. Kagan to go into personal

bankruptcy to assist in destroying the expansion of the mall. Co-schemer Bertram Robinson concealed and covered up with co-schemers Eugene M. Kagan, Allen M. Heflin, and Jack Heflin, the above schemers and the existence of secret agreements among said co-schemer that co-schemer Bertram Robinson would continue to obstruct movements in the Chapter 11 proceedings and did knowingly act so to foster co-schemers Eugene M. Kagan's plan to manipulate Chapter 11 proceedings to the detriment of Plaintiff George Vakalis, general partner of Rockingham Mall. Among the various schemes carried on was the breaking up of the Denitex International

sale of Rockingham Mall for $2,000,000.00 above the mortgage by co-schemer Bertram Robinson by asking for monies of approximately $50,000.00 and $800,000.00 in addition to other concessions from the buyer.

4. Other actions in the scheme included other obstruction tactics by co-schemer Bertram Robinson by refusing to cooperate with other joint venture reorganization proposals. Co-schemer Bertram Robinson's actions continued throughout the Chapter 11 for reorganization causing a defective Chapter 11 with the failure on the part of Widett, Slater & Goldman to take proper actions. It was co-schemer

Bertram Robinson's plan to protect co-schemer Eugene M. Kagan who had acted to put the mall in Chapter 11 as part of the scheme.

5. The Chapter 11 of the Rockingham Mall remained in limbo with approximately $300,000.00 on hand to pay $100,000.00 of unsecured creditors and a Chapter 7 is now being threatened by the Trustee. Other actions of co-schemer Bertram Robinson in this scheme are shown in the above paragraphs of Count 1.

6. It was further part of this scheme to have Plaintiff George Vakalis who had been the managing partner of Rockingham

Mall to absorb the complete administrative brunt of the massive Chapter 11 writings, letters and documentations from 1980 to present; in order to interfere with his business affairs and to obstruct his litigation efforts against co-schemers Bertram Robinson, Eugene M. Kagan, Allen M. Heflin and Jack Heflin.

7. Co-schemer E. Reuel Stoltz, Spitz, Sullivan, Wachtel & Falcetta, acting as CPA for Rockingham Mall and other projects played his role in this scheme by obstructionist tactics and other overt actions cited herein the above paragraphs.

8. While these actions on the Chapter 11 of Rockingham Mall

continued during 1980 to the present, co-schemer Eugene M. Kagan continued his other actions against Plaintiff Vakalis in East Street Mall Association Enterprise and the Country Club Enterprise by withholding his development fee, other monies, and cash flow in his attempt to bankrupt Plaintiff George Vakalis and take his monies and property.

9. Co-schemer Bertram Robinson, in order to carry out this planned scheme, which included secret agreements with co-schemers Eugene M. Kagan, Allen M. Heflin, Jack Heflin and E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel & Falcetta, continued to

direct VSR Associates Enterprise debts against plaintiff George Vakalis including his overt actions with co-schemer Wornat Development Corporation a VSR Enterprise debt against Plaintiff Vakalis solely and against his execution won in Court against co-schemer Eugene M. Kagan, Allen M. Heflin and Jack Heflin on January 11, 1983, in Hampden Superior Court, Vakalis v. Kagan, et al. (The above actions being in violation of 18 United States Code Article 152.)

Count 9

1. Paragraphs 1-36 and 37 through 110 of Count 1 of this suit are

hereby incorporated by reference and realleged as though set forth in full herein.

2. On or about March 17, 1980, in the District of Connecticut and elsewhere, the Defendants:

Eugene M. Kagan
Allen M. Heflin
Jack Heflin
Bertram Robinson
E. Reuel Stoltz, CPA,
Spitz, Sullivan,
Wachtel & Falcetta

having devised and intending to devise the scheme to defraud and to obtain money and property from the Plaintiff George Vakalis by means of false and fraudulent pretenses, representations and promises and for the purpose of executing said scheme, knowingly caused to be delivered by the Postal

Service to Plaintiff George Vakalis at his office at 111 Pearl Street, Hartford, CT 06103, according to the directions there on mail matter to wit: a letter from co-schemer Jack Heflin acting for co-schemer Allen M. Heflin and with co-schemers Eugene M. Kagan and E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel & Falcetta concerning information on leases that general partner George Vakalis was working on for the Country Club Shopping Center. This letter was finally written after Plaintiff George Vakalis had made repeated efforts concerning information on the progress of the center in final stage of completion in 1980.

3. The above defendants, with co-schemer Allen M. Heflin, did knowingly and willfully conceal and cover up by tricks and schemes and devices their plan relating to Interstate Regional Shopping Centers, Ltd., Country Club Associates and the East Street Mall Associates from Plaintiff George Vakalis until some time in 1979 when co-schemers Eugene M. Kagan, Allen M. Heflin and Jack Heflin attempted to have Plaintiff George Vakalis forced out of the East Street Mall Associates partnership.

4. Co-schemer Allen M. Heflin had obtained equities in Interstate Regional Shopping Centers Ltd of 33 1/3%; East Street Mall

Associates 33 1/3% and Country Club Associates 33 1/3% based on his partnership obligation to furnish the financial backing and his fiduciary and contractual obligations therein.

5. That Allen M. Heflin covered up and concealed his role by using his son co-schemer Jack Heflin and his long time counsel and partner co-schemer Eugene M. Kagan. In furtherance of the scheme to defraud Allen M. Heflin also used his accountants acting through co-schemer E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel & Falcetta.

6. Allen M. Heflin concealed the existence of his secret agreements among co-schemers

Jack Heflin, Eugene M. Kagan, Bertram Robinson and E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel & Falcetta.

7. Co-schemer Allen M. Heflin did not intend to sign the various construction loans a promised originally and therefore obtained his shares of 33 1/3% by fraud as a second mortgage lender.

8. Co-schemer Allen M. Heflin did commit further fraud in this conspiracy by working several tricks with co-schemer Eugene M. Kagan and Jack Heflin to obtain more equity in Country Club above his 33 1/3% by threatening Plaintiff Vakalis to give up equity in order to place

a second mortgage on Country Club. As described in paragraphs above, co-schemer Allen M. Heflin threatened by extortion to obtain an additional 10% from the so-called partners of Country Club for the second mortgage which co-schemer Eugene M. Kagan had arranged to be guaranteed. If the second mortgage was funded, meaning called in for payment before completion, this would be at the whim of co-schemer Eugene M. Kagan and Allen M. Heflin; then co-schemer Allen M. Heflin would obtain an additional 40% interest in the Country Club project as described in above paragraphs of Count 1.

9. The trick scheme and devise utilized by the Defendants included eventually calling in the "Heflin guaranteed Second Mortgage Note" as part of the on-going fraud scheme to force General Partner George Vakalis out of the Country Club Associates partnership in an effort to further conceal and cover up the actions of co-schemer Allen M. Heflin.

Count 10

1. Paragraphs 1-36 and 37 through 110 of Count 1 of this suit are hereby incorporated by reference and realleged as though set forth in full herein.

2. On or about June 25, 1980, in the District of Connecticut and elsewhere, the Defendants:

Eugene M. Kagan
Allen M. Heflin
Jack Heflin
Bertram Robinson and
E. Reuel Stoltz, CPA,
Spitz, Sullivan, Wachtel
& Falcetta

having devised and intending to devise the scheme to defraud and to obtain money and property from the Plaintiff General Partner, George Vakalis by means of false and fraudulent pretenses, representations and promises and for the purpose of executing said scheme, knowingly caused to be delivered by the Postal Service to Plaintiff George Vakalis at his home address: 1005 North Street, Suffield, Connecticut 06078 according to the directions

thereon mail matter to wit: A demand letter from co-schemer Eugene M. Kagan and Jack Heflin on Country Club Associates letterhead demanding payment to the partnership within ten (10) days after the date of his letter, the sum of $175,714.94 representing Plaintiff George Vakalis' supposed share as part of the trick for the Heflin note that was not due except by "whim" but legally guaranteed to be paid out of Country Club proceeds in both the construction loan with Colblanc Realty of Connecticut and the State Mutual permanent loan on Country Club.

3. Commencing on or about July of 1977 and continuing thereafter

until the present in the District of Connecticut and elsewhere as described above in Count 1, paragraphs 1-36 and 37 through 110 and further described in Counts 2-9 and in the overt actions; co-schemer defendant Eugene M. Kagan with co-schemers Allen M. Heflin, Jack Heflin, Bertram Robinson and E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtell & Falcetta, including other known and unknown co-schemers did knowingly and willfully conceal and cover up by tricks, schemes and devices his actions as legal counsel in all his dealings with General Partner Plaintiff George Vakalis in promoting the corrupt conspiracy with co-schemer Allen M. Heflin and co-schemer Jack

Heflin and others to obtain Plaintiff's equity interests in Country Club Associates with fees, draws and cash flow in excess of $3,000,000.00 over the term of leases.

4. Co-schemer Defendant Eugene M. Kagan acting as paid counsel on these various matters and controlling the legal financial affairs of General Partner George Vakalis acted to Plaintiff George Vakalis' detriment in his handling of Interstate Regional Shopping Centers, Ltd., Rockingham Mall Associates, Country Club Associates, VSR Associates, Wornat Development Corporation-Shawmut Bank and Trust, Derby, Vermont, Bertram Robinson, Allen

M. Heflin, Jack Heflin, E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtell & Falcetta, Harland Shapiro, New England Mutual Life, State Mutual Life, Caldors Inc., Bradlees Stop and Shop, the Hunneman Company with all counsels including Widett, Slater, Goldman, P.C. and others, and Mary Diana Vakalis' home.

5. Co-schemer Eugene M. Kagan concealed and tried to cover up his detrimental actions against Plaintiff George Vakalis while acting as paid counsel to all parties of the partnership and himself as a general partner. Co-schemer Eugene M. Kagan attempted to cover up the

existence of secret agreements with co-schemers Jack Heflin, Bertram Robinson, and E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtell & Falcetta, and other known and unknown co-schemers. The purpose of these secret agreements was to influence the affairs of general partner George Vakalis to his detriment to achieve the object of the conspiracy.

6. On or about August 26, 1980, co-schemer Eugene M. Kagan assigned one half interest of the Heflin second mortgage to First Bank of Hartford, Connecticut. On the same date, co-schemer assigned his one half interest as security for a note to First Bank for $263,572. The note was

signed by co-schemer Eugene M. Kagan. On August 26, 1980, co-schemer Eugene M. Kagan prepared an illegal certificate indicating a buyout that did not exist. On or about August 22, 1980, co-schemer Allen M. Heflin assigned the Country Club second mortgage to co-schemers Eugene M. Kagan and Jack Heflin.

7. In addition to the many overt actions by co-schemer Eugene M. Kagan in the on-going fraud scheme to obtain monies and property from Plaintiff, George Vakalis, co-schemer Eugene M. Kagan acting with co-schemers Allen M. Heflin and Jack Heflin made at least two attempts of direct "extortion" tricks

against Plaintiff George Vakalis to force him into the scheme positions by threat of loss of his share in the Country Club Associates. This was in violation of 18 United States Code, 1952 (B)(2).

8. In conducting these tricks and schemes, co-schemer Eugene M. Kagan acted with actual malice including full knowledge of the falsity of his representations and willful and wanton desire to deceive the Plaintiff with an evil or rancorous motive influenced by hate, the purpose being to deliberately injure the Plaintiff; and/or with implied malice including a reckless wanton disregard for truth or falsity in these representations and the rights of the Plaintiff.

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OVERT ACTIONS

In furtherance of this conspiracy and to effect its objects, the Defendants and their co-conspirators committed and caused to be committed the following overt acts, among others in the district of Connecticut, Massachusetts and elsewhere:

1. On or about March 21, 1979, co-conspirator Eugene M. Kagan sent a letter outlining as "abortions" a number of the sites that George Vakalis had worked on for the Interstate Regional Shopping Center partnership and again requested monies without a proper accounting or verification of the books and records.

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2. On or about March 15. 1979, co-schemer and conspirator Eugene M. Kagan sent out a memorandum for East Street Mall Associates citing loans to the partnership by Eugene M. Kagan and Allen M. Heflin demanding payments without proper accountability and further, co-schemer Eugene M. Kagan kept making improper projections to justify his demands. In this memorandum he was looking for $97,000.00 from George Vakalis prior to any verified figures or costs, despite repeated requests by George Vakalis. This was part of the scheme to create or extract an addendum to the original Westfield agreement. This addendum would then be a means by which Eugene M. Kagan

could demand monies in advance from George Vakalis to squeeze him out of his deal.

3. On March 22, 1979, co-conspirator Eugene M. Kagan acting as counsel and partner in Country Club Associates refused to allow George Vakalis to sign the partnership agreement for Country Club Associates, which he and co-schemers Allen M. Heflin and Jack Heflin had held up for a prolonged period to force Vakalis to sign a waiver of a preagreed and fully disclosed $35,000 dollar fee of origination. Co-schemer Eugene M. Kagan told George Vakalis he would be out of the Worcester deal unless he waived the fee. At this time he called co-

schemer Jack Heflin by telephone in Worcester, Massachusetts, to force other last minute concessions out of George Vakalis regarding necessary footage for his $150,000.00 development sweat fee, and again threatened George Vakalis to sign or be thrown out of the deal.

4. On or about September 10, 1979, co-schemer Eugene M. Kagan wrote to George Vakalis making a series of accusations in order to cause disputes and harassment. A memorandum to split construction and financing of the Shopping Center in Worcester had been forced on George Vakalis giving him no time to review; co-schemer

Eugene M. Kagan accused George Vakalis of holding up the partnership agreement when in fact co-schemer Eugene M. Kagan and co-schemer Allen M. Heflin and co-schemer Jack Heflin were holding it up for a prolonged period of time.

5. It was further part of the scheme when on or about October 15, 1979, co-schemer Eugene M. Kagan wrote a letter to George Vakalis regarding Country Club Associates monies due, but that they would loan them to George Vakalis under the partnership agreement with George Vakalis' shares and cash flow assigned. Co-schemer Eugene M. Kagan describes a mortgage for the Worcester project requiring a

guaranty by Allen M. Heflin. He stated that he did not know if co-schemer Allen M. Heflin would guaranty without additional compensation. Co-schemer Eugene M. Kagan and co-schemer Allen M. Heflin were conspiring to collect twice for Allen M. Heflin; as a 33 1/3% silent partner and again as a second mortgage lender. He then accuses George Vakalis of not cooperating and not answering calls as part of the scheme.

6. On or about October 30, 1979, co-schemer Eugene M. Kagan in conspiracy with co-schemers Allen M. Heflin and Jack Heflin threatened to sell or mortgage the entire Country Club project. This action was

planned in the conspiracy to prepare to force George Vakalis into giving co-schemers Allen M. Heflin and Jack Heflin additional shares for their part as second mortgage lenders in preparation for the scheme to call in this second mortgage early.

7. On or about October 31, 1979, co-schemer Eugene M. Kagan in his continued attempts to force George Vakalis out of the Country Club project created a series of mistakes on use of names of partnership or principals on checks for $266.67 to refuse the checks to create a forced default of George Vakalis and to trigger all notes. He (Kagan) refused payments except

in full in his letter of October 31, 1979.

8. On or about October 1979, co-schemer Eugene M. Kagan outlines that co-schemers Allen M. Heflin and Jack Heflin have offered to sign a completion certificate for an additional 10% of the deal and if he (co-schemer Allen M. Heflin) is required to fund up to $600,000.00 he will accept another 40% interest in Country Club Associates. Co-schemers Eugene M. Kagan, Allen M. Heflin and Jack Heflin now saw the immense profits to be made in the Country Club project due to George Vakalis' primary efforts and they now conspired to take George Vakalis' shares once again. In order to induce

George Vakalis to sign the 10% and 40% to defraud him, co-schemer Eugene M. Kagan told George Vakalis they would have one week to seek another lender knowing well that if George Vakalis signed, they would never give up their additional 50% additional interest above the original 33 1/3% in the partnership agreement. Co-schemers Eugene M. Kagan, Allen M. Heflin and Jack Heflin were attempting to obtain 83 1/3% of the Country Club project. As further part of the scheme co-schemer Eugene M. Kagan demanded that he split the remaining interest above 83 1/3% with George Vakalis. When George Vakalis refused to agree to the above at a meeting in co-schemer

Eugene M. Kagan's office with co-schemers Allen M. Heflin and Jack Heflin, co-schemer Allen M. Heflin said, "If you agree to an additional 3 1/3% deducted from each partners' interest, I will be only cutting your thumb off, if you don't agree then I will cut your entire wrist off completely." This threat demonstrated their trick intentions to oust George Vakalis out of his own Country Club project at any cost.

9. On or about October 1979, co-schemer Eugene M. Kagan created an emergency to preempt acceptance of co-schemer Allen M. Heflin's demands for additional interest up to 50% by

entering into an agreement to sell the 50% for $710,000.00 - $750,000.00.

10. On or about January 16, 1980, co-schemer was concealing the Iandoli Supermarket lease while having Vakalis pursue a large number of other markets as a replacement.

11. On or about February 7, 1980, co-schemer Eugene M. Kagan started another financial trick to default by writing letters to default Vakalis on interest payments of $22.47. Co-schemer Eugene M. Kagan wrote a number of letters citing alleged mistakes to cause confusion and harassment.

12. In furtherance of the scheme to defraud, on or about June 1980, co-schemer Eugene M. Kagan working with co-schemers Allen M. Helfin and Jack Heflin wrote to Vakalis and advised him that he was in default and called for a "buy-out" of his shares on August 4, 1980. Co-schemer Eugene M. Kagan and co-schemers Allen M. Heflin and Jack Heflin were again attempting to force Vakalis out for $35,000.00 dollars when they owed Vakalis $150,000.00 and more than $3,000,000.00 in cash flow over the term of the leases.

13. In furtherance of the scheme on or about June 25, 1980, co-schemers Eugene M. Kagan, Allen

M. Heflin and Jack Heflin wrote !o Vakalis in furtherance of the scheme to defraud, a notice for demand of $175,714.94 for co-schemer Allen M. Heflin's note as a silent partner when in fact it was not due at this time, and funds were available out of the construction funds as it had been contractually provided for in the mortgage agreements with State Mutual Life Insurance Company and the construction lender Colonial Bank. This was another act in a series of tricks to default Vakalis out of the Country Club project.

14. In furtherance of the scheme to defraud, co-schemer Bertram Robinson met with Vakalis at 9:00 a.m. on March 19, 1980, at

which time he knew that co-schemer E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel & Falcetta was sending out a letter for final demand for monies on East Street Mall Associates by March 15, 1980, at 5:00 p.m. Co-schemer Bertram Robinson told Vakalis he would not give him permission to hypothicate at Shawmut Bank to pay the demand monies for East Street Mall Associates project unless his demands were met as follows:

A. A letter from Vakalis to assist him in another suit for fraud against Robinson which was filed by Dr. George Franklin.

B. Co-schemer Bertram Robinson advised he would not have his son Marc Robinson agree to sign for hypothication unless all partners

including himself
could hypothicate.

Co-schemer Robinson also entered into a dispute on another project: Derby, Vermont, where he refused to pay Vakalis an agreed $45,000.00 with co-schemer Harland Shapiro and Security National Bank and Trust. Co-schemer Robinson had refused to sign purchase sale agreements for the sale of the land after all negotiations were completed. It was discovered later that he had borrowed heavily and he would not remove liens on the land.

15. Co-schemer Bertram Robinson stated within a few days later that co-schemer Eugene M. Kagan demanded that Vakalis sell out

and that co-schemer Eugene M. Kagan had told him that he had checks to buy Vakalis out of both the Country Club project and the East Street Mall project.

16. In furtherance of the scheme, Vakalis on or about July 10, 1980, was sued by co-schemer Jack Heflin. Co-schemer Jack Heflin also sued Vakalis' bank - Shawmut Bank in this same action of harassment. The purpose of this suit was three fold: First, to cite many of the fraud activities that co-schemers Eugene M. Kagan, Allen M. Heflin and Jack Heflin were doing against Vakalis; alleging in the suit that Vakalis was in fact taking the above fraud actions

against co-schemers Eugene M. Kagan, Allen M. Heflin and Jack Heflin. Second, to sue Shawmut Bank so that they would not loan Vakalis any further monies. And thirdly, to force Vakalis to sign permanent loan commitment papers, which Vakalis' attorneys had advised him not to do at that time due to co-schemer Eugene M. Kagan's fraud actions. Co-schemer Eugene M. Kagan, who was not a party to this lawsuit, still came to court each day to orchestrate a group of attorneys including his own attorney against Vakalis. After approximately three weeks of trial Vakalis' counsel filed claims of law and advised Vakalis to go ahead and sign the commitment papers in court and

to sue co-schemers Eugene M. Kagan, Allen M. Heflin, and Jack Heflin, and to further sue co-schemer Attorney Eugene M. Kagan for his actions as counsel for Rockingham Mall.

17. In furtherance of the scheme co-schemer Bertram Robinson wrote to the firm of Widett, Slater and Goldman on July 17, 2980, to prevent the 205A action against former counsel co-schemer Eugene M. Kagan who had prevented expansion of Rockingham Mall and had taken other actions to place in Chapter 10 with co-schemer Robinson.

18. On or about July 16, 1980, co-schemer Eugene M. Kagan continuously refused to give

accountant Alec Bobrow checks or bank statements. George hired Alec Bobrow, CPA, to review the books of Country Club Associates. Co-schemer E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtell & Falcetta accountant for co-schemer Eugene M. Kagan, and co-schemers Allen M. Heflin and Jack Heflin, and accountant for Rockingham Mall Associates, East Street Mall Associates, Interstate Regional Shopping Centers, Ltd., and Country Club Associates stated he did not have the records either. Co-schemer Eugene M. Kagan's office refused Vakalis continually by telephone and personal visit to show the books or furnish the records also.

19. It was further part of the scheme on or about October 30, 1979, that co-schemer Eugene M. Kagan called on the telephone and said "Do you want to sell out? You're not happy, we're not happy, you should sell out or else, you have a family."

20. On or about October 2, 1979, the construction loan for $3,400,000.00 was signed by co-schemers Eugene M. Kagan and Jack Heflin with George Vakalis also for the Country Club project with Colbanc Realty Corporation obligating Vakalis personally for his 33 1/3% share. Co-schemer Eugene M. Kagan who was obligating Vakalis with the construction loan while at the same time trying to force

him out of the Country Club project.

21. On or about October 2, 1979, it was further part of the scheme when co-schemer Eugene M. Kagan acting as counsel for Rockingham Mall had previously failed to obtain approval for expansion of the Mall, and refused to take the necessary legal steps to obtain said approval for expansion. Co-schemer Eugene M. Kagan made a series of improper actions against Vakalis' interest in Rockingham Mall.

22. On or about June 30, 1980, co-schemer Bertram Robinson met George Vakalis in Hartford,

Connecticut and said, "Are you ready to give up?" At another meeting shortly thereafter, co-schemer Bertram Robinson advised Vakalis that co-schemer Eugene M. Kagan had said that he had five checks on his desk to buy Vakalis out of both the Country Club project and the East Street Mall project. Co-schemer Bertram Robinson further advised Vakalis during this period, of the many long and extensive meetings that he had been to with co-schemer Eugene M. Kagan in which co-schemer Kagan would attempt to convince Bertram Robinson not to allow Vakalis to hypothicate his shares in the Country Club or East Street Mall projects, in order to block Vakalis' payments. During this period co-

schemer Bertram Robinson also advised Vakalis of additional meetings with co-schemers Eugene M. Kagan, Allen M. Heflin and Jack Heflin, in which the "handling" of George Vakalis was discussed.

23. On May 31, 1978, co-schemer Eugene M. Kagan prepared a bill for the sale of Derby, Vermont, land owned by Vakalis, Bertram Robinson and Harland Shapiro. Co-schemer Kagan was attempting to introduce himself into this transaction during this period of time.

24. On June 1, 1978, co-schemer Eugene M. Kagan billed George Vakalis for VSR matters and

legal services. These billings were in addition to his monthly billings for Rockingham Mall.

25. On June 29, 1978, the law firm of Fine and Ambrogne wrote a certified letter to Vakalis threatening foreclosure of Rockingham Mall for payment of (3) mortgage shares to the Hunneman Company's (13) partners. Co-schemer Kagan received a copy of !his certified mailing.

26. On or about January 31, 1978, co-schemer Eugene M. Kagan was working with Attorney Fine who also represented the owner of E.M. Loews, Auburn, Massachusetts shopping center site. On September 19, 1978, an

option was taken for Interstate Regional Shopping Centers Ltd. for Auburn Caldors shopping center. Co-schemers Eugene M. Kaqan and Jack Heflin created various disputes reference the above shopping center site.

27. It was further part of the scheme that on or about June 9, 1978, co-schemer Eugene M. Kagan confirmed a $180,000.00 dollar advance for a Firestone Tire mortgage, for a build to suit pad location at Rockingham Mall. Co-schemer Eugene M. Kagan refused to obtain one final document from Bradlees Stop and Shop, the major anchor at the Mall, causing the loss of the Firestone transaction after

being paid for the work to arrange such a transaction.

28. On or about June 29, 1978, and thereafter, co-schemer Bertram Robinson refused to pay the Hunneman Company their proper payments after the June 30, 1978 payment.

29. In another of a series of actions taken by co-schemer Eugene M. Kagan as paid counsel for Rockingham Mall, the lease for a $60,000.00 s.f. Value House tenant was worked on, yet never carried forward. Co-schemer Eugene M. Kagan refused to do the proper legal work to see this transaction to its normal conclusion as part of the scheme to defraud, as this

expansion-new tenant would have generated necessary additional cash flow to the owners of Rockingham Mall.

30. It was further part of the scheme that on December 3, 1978, co-schemer E. Reuel Stoltz, Spitz, Sullivan, Wachtel & Falcetta, prepared improper and erroneous check summaries on Rockingham Mall in an attempt to discredit George Vakalis as drawing more funds than co-schemer Bertram Robinson.

31. On January 10, 1979, co-schemer Bertram Robinson was put on notice by letter to stop making abrasive and abusive remarks to George Vakalis' secretary and office staff.

32. On March 26, 1979, co-schemer Eugene M. Kagan wrote George Vakalis to advise that East Street Mall project monies would be returned in 90 days.

33. On September 1, 1979, co-schemer Eugene M. Kagan submitted another bill for Rockingham Mall as Attorney for George Vakalis and co-schemer Bertram Robinson in the amount of $5,018.09. Co-schemer Eugene M. Kagan was billing Rockingham Mall and receiving legal fees while at the same time attempting to put the Mall into a foreclosure position.

34. On November 5, 1979, co-schemer Eugene M. Kagan resigned as

counsel for Rockingham Mall after having talked to lenders, requesting updates as to how the foreclosure was coming along.

35. On December 7, 1979, co-schemer Eugene M. Kagan sent a bill for work done on the Firestone matter. This was further part of the fraud as co-schemer Eugene M. Kagan had acted improperly with respect to his work.

36. On December 7, 1979, co-schemer Eugene M. Kagan sent a distorted and erroneous bill on Rockingham Mall in excess of $8,400.00

37. On January 22, 1980, New England Mutual Life, lender for Rockingham Mall wrote to George

Vakalis advising notice to foreclose. Co-schemer Eugene M. Kagan had been communicating with the lender New England Mutual Life through his office.

38. On February 1, 1980, co-schemer Eugene M. Kagan billed co-schemer Bertram Robinson individually as counsel for CBT foreclosure on a tract of land in Enfield, Connecticut for a bank default of $240,000.00.

39. On April 3, 1980, an involuntary petition was filed by Attorney Fine for the thirteen Hunneman Company partners for Rockingham Mall Trust. Co-schemer Eugene M. Kagan had been negotiating with Attorney Fine on Rockingham Mall and on Auburn,

Massachusetts shopping center site for Interstate Regional Shopping Centers Ltd.

40. On April 29, 1980, George Vakalis obtained Widett Slater and Goldman to file a Chapter 11 for reorganization of the Rockingham Mall.

41. On July 17, 1980, during the Rockingham Mall proceedings, co-schemer Bertram Robinson wrote a letter opposing the 205A of co-schemer Eugene M. Kagan. Co-schemer Bertram Robinson had previously refused to replace co-schemer Eugene M. Kagan as counsel for Rockingham Mall.

42. It was further part of the scheme of co-schemer Eugene M.

Kagan to cause a series of disputes and tricks with respect to the store leasing of the Country Club project. Co-schemer Eugene M. Kagan continuously concealed and withheld information with respect to store leasing on the Country Club project.

43. It was further part of the criminal conspiracy to defraud and take general partner George Vakalis' holdings, when co-schemer Eugene M. Kagan created an illegal certificate and attempted to fraudulently buy-out the Country Club interests of George Vakalis. These fraud actions were of a major tortious magnitude forcing Vakalis to expend legal fees in excess of

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$300,000.00 dollars in order to defend his assets and to adjudicate the fraud and fiduciary breach committed by co-schemers Eugene M. Kagan, Allen M. Heflin, Jack Heflin and Bertram Robinson.

44. Co-schemer Eugene M. Kagan's office during July of 1980, refused continually to send copies of leases that co-schemer Eugene M. Kagan was preparing.

45. On June 23, 1980, it was further part of the scheme when co-schemer E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel & Falcetta wrote a letter to George Vakalis requesting $4,305.00 for a tax return that he had originally quoted

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$1,200.00 for, in preparing said tax return. George Vakalis terminated E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel & Falcetta services after paying him for the above tax returns. Co-schemer E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtel & Falcetta further refused to cooperate in releasing financial information in the Chapter 11 proceedings on Rockingham Mall, until threatened by a court order.

46. It was further part of the scheme when on or about July 17, 1979, during the development of East Street Mall Associates' project, various Interstate Regional Shopping Center projects including Country Club

plaza, that co-schemer Eugene M. Kaqan old developer George Vakalis that the "working" partner should be paid and that co-schemer Allen M. Heflin and Jack Heflin were sorry that they had tried to take his shares in the westfield-East Street Mall project. This was further part of the trick to deceive Vakalis into continuing work on the various Interstate Regional Shopping Center projects, including Country Club Plaza.

47. It was further part of the scheme to defraud when co-schemer Eugene M. Kagan called Caldors Department Store from his home in Hollywood Florida during George Vakalis' negotiations with Caldors on the

Taunton, Massachusetts project, to discredit developer Vakalis, and to damage Vakalis' reputation with the Department store.

48. It was further part of the scheme to defraud when co-schemer E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtell & Falcetta continually asked Vakalis to do his personal income taxes.

49. It was fur!her part of the scheme when co-schemer E. Reuel Stoltz, CPA, Spitz, Sullivan, Wachtell & Falcetta prepared partnership returns for Interstate Regional Shopping Centers Ltd. partnership. It

was further part of the scheme when during the years 1979-1983, that co-schemer Bertram Robinson and Harland Shapiro acted to place various VSR Associates' debts against Vakalis and all his Real Estate holdings. This was part of the scheme to engage Vakalis in a series of fraud activities and game plans to interfere with his development activities and other business.

51. On or about July 30, 1979, co-schemer Eugene M. Kagan called Plaintiff George Vakalis' office and left the following message: "If you don't come in this morning, you're out of the deal." This threat was one of a series of such overt actions by co-schemer Eugene M. Kagan.

52. It was on or about mid 1979 when co-schemer Bertram Robinson met with co-schemer Eugene M. Kagan to have Robinson's son substitute as the general partner in East Street Mall Associates. This action was to convert his interest and to conceal it from creditors and further protect it in the enterprise conspiracy action.

53. On or about October 2, 1979, Colbanc Realty Corporation of Waterbury, Connecticut, wrote to co-schemer Eugene M. Kagan regarding financing for Country Club Associates of $3,400,000.00 and outlined terms and conditions. This commitment was not signed by co-schemer Allen

M. Heflin's silent general partner with co-schemer Jack Heflin to avoid any financial risk.

54. On August 26, 1980, co-schemer Eugene M. Kagan and Jack Heflin signed a mortgage with New York Life as sole general partners and registered said mortgage.

55. On or about October 7, 1980, co-schemer Eugene M. Kagan and co-schemer Jack Heflin withdrew $35,736.60 each in form of checks Number 103 and Number 102 from the Country Club Associates Account.

56. On or about April 4, 1979, co-schemer Jack Heflin withdrew a check for $8,000.00 from Country Club Associates' account.

57. On or about August 10, 1979, co-schemer Jack Heflin drew out a check for $1,000.00 (check no. 1008) from Country Club Associates.

58. On or about November 15, 1979, co-schemer Eugene M. Kagan paid his own counsel $475.00 per check no. 1025 out of Country Club Associates.

59. On or about January 30, 1980, Allen M. Heflin received two checks in !he amount of $1,027.56 and $7,933.71 as interest payments from Country Club Associates.

60. On or about July 15, 1980, the law firm that represented Vakalis on Rockingham Mall namely, Rackman, Sawyer and Brewster, received two checks for $750.00 and $31.00 from Country Club Associates.

61. On December 5, 1979, check no. 104 in the amount of $3,950.00 was paid by Country Club Associates to co-schemer Jack Heflin's and Allen M. Heflin's attorneys' Lublin, Lublin, Kantor and Litman.

62. On or about June 9, 1980, co-schemer Allen M. Heflin received interest payments of $8,346.46 from Country Club Associates.

63. On or about July 7, 1980, co-schemer Allen M. Heflin received

a check for $8,346.46 from Country Club Associates.

64. On or about August 8, 1980, co-schemer Allen M. Heflin received a check for $8,346.48 from Country Club Associates.

65. On or about July 26, 1980, co-schemer Allen M. Heflin received a check #174 in the amount of $7,134.51 from Country Club Associates.

66. On or about September 4, 1980, co-schemer Jack Heflin with-drew a check #181 in the amount of $605.97 from Country Club Associates.

67. On or about October 6, 1980, co-schemer Eugene M. Kagan withdrew

check #196 in the amount of $4,173.23 as interest on the second mortgage from Country Club Associates.

68. On or about October 6, 1980, co-schemer Jack Heflin withdrew check #197 in the amount of $4,173.23 from Country Club Associates.

69. On or about August 15, 1980, co-schemer Eugene M. Kagan withdrew check #177 in the amount of $9,000.00 as legal fees from Country Club Associates.

70. On or about November 3, 1980, co-schemer Eugene M. Kagan and co-schemer Jack Heflin withdrew two (2) checks in the amount of

$4,173.23 each number 204 and 205 from Country Club Associates.

71. On or about December 2, 1980, co-schemer Eugene M. Kagan and Jack Heflin withdrew two (2) checks in the amounts of $4,173.23 each with check numbers 203 and 212 from Country Club Associates.

72. On or about December 11, 1980, co-schemer Eugene M. Kagan withdrew $26,000.00, check #219, from Country Club Associates.

73. On or about December 16, 1980, co-schemer Eugene M. Kagan withdrew $5,930.00, check #221, from Country Club Associates.

74. On or about December 11, 1980, co-schemer Jack Heflin withdrew

check #119 from one of the Country Club Associates accounts in the amount of $26,000.00.

75. On or about December 8, 1980, co-schemer Eugene M. Kagan withdrew check #119 from one of the Country Club Associates accounts in the amount of $263,572.00.

76. On or about December 8, 1980, co-schemer Jack Heflin withdrew check #120 in the amount of $263,572.00 from Country Club Associates.

77. On or about January 1, 1981, co-schemer Eugene M. Kagan withdrew $900.41 from Country Club Associates, check #121.

78. On or about January 6, 1981, co-schemers Eugene M. Kagan, Jack Heflin, and Allen M. Heflin transferred check #224 for $30,500.00 to another account.

79. On or about January 6, 1981, co-schemer Jack Heflin withdrew check #129 in the amount of $50,393.38 from the Country Club Associates account.

80. On or about January 6, 1981, co-schemer Eugene M. Kagan withdrew $49,393.77 from the Country Club Associates account.

81. On or about February 17, 1981, co-schemer Eugene M. Kagan withdrew $12,000.00 with check #237 from Country Club Associates.

82. On or about February 17, 1981, co-schemer Jack Heflin withdrew $12,000.00 with check #236 from Country Club Associates account.

83. On or about April 3, 1981, co-schemer Eugene M. Kagan withdrew $13,100.00, check #131, and another withdrawal for $31,327.12, check #130.

84. On or about July 22, 1981, co-schemer Eugene M. Kagan and Jack Heflin withdrew checks #272 and #270 each in the amount of $3,750.00 from Country Club Associates.

85. On or about June 4, 1981, co-schemer Jack Heflin withdrew check #132 in the amount of

$23,116.00 from Country Club Associates.

86. On or about April 14, 1981, both co-schemers Eugene M. Kagan and Jack Heflin withdrew $8,000.00 each per checks #259 and #260 from one of the Country Club Associates accounts.

87. On or about June 12, 1981, both co-schemer Eugene M. Kagan and Jack Heflin withdrew $3,000.00 each per checks #283 and #282 of one of the Country Club Associates accounts.

88. On or about July 12, 1981, both co-schemers Eugene M. Kagan and Jack Heflin withdrew $4,500.00 each per check #293 and #292 from one of the Country Club Associates accounts.

89. On or about July 19, 1981, co-schemer Eugene M. Kagan and co-schemer Jack Heflin withdrew $7,500.00 each per check numbers 307 and 308 from Country Club Associates.

90. On or about August 12, 1981, co-schemer Eugene M. Kagan withdrew check #300 in the amount of $13,188.00 from the Country Club Associates account.

91. On or about August 12, 1981, co-schemer Jack Heflin withdrew $13,188.00 per check #299 from the Country Club Associates account.

92. On or about September 15, 1981, co-schemer Eugene M. Kagan

withdrew check #316 in the amount of $3,500.00 from Country Club Associates account.

93. On or about October 12, 1981, co-schemer Eugene M. Kagan withdrew a check #325 in the amount of $21,000.00 from Country Club Associates.

94. On or about October 13, 1981, co-schemer Jack Heflin withdrew a check #326 in the amount of $21,000.00 from Country Club Associates.

95. On or about November, 1981, both co-schemer Eugene M. Kagan and Jack Heflin withdrew two (2) checks #223 and #324 in the amount of $8,000.00 each from

one of the Country Club Associates. These checks were rendered by co-schemer Eugene M. Kaqan and Jack Heflin to buy Vakalis out with return of his own money for 33 1/3%.

96. On or about August 22, 1980, co-schemer Allen M. Heflin assigned the second mortgage with Country Club Associates to co-schemer Eugene M. Kagan and to co-schemer Jack Heflin.

97. On or about August 26, 1980, co-schemer Eugene M. Kagan assigned one half interest of the Allen M. Heflin second mortgage with Country Club Associates to First Bank of Hartford, Connecticut and represented that he was one half owner of the note.

98. On or about August 26, 1980, the above assignment was secured by a note for $263,572.00 signed by co-schemer Eugene M. Kagan.

99. On or about August 26, 1980, co-schemers Eugene M. Kagan, Jack Heflin, and Allen M. Heflin prepared an illegal "certifica!e" to represent to the lenders that there was a legal buy-out of George Vakalis.

100. On or about August 21, 1980, Shawmut Bank and Trust returned checks to !he Defendants' Attorneys indicating said were unacceptable.

COUNT 11

(Rico Violations against Eugene M. Kagan, Allen M. Heflin, Jack Heflin, Bertram Robinson, Harland Shapiro, and E. Reule Stoltz, Spitz, Sullivan, Wachtel & Falcetta, Country Club Associates, East Street Mall Associates, Interstate Regional Shopping Centers, Ltd., and VSR, Associates.)

1. Paragraphs 1-36 and 37 through 110 of Count 1 are hereby incorporated by reference and realleged as though set forth in full therein.

2. The Plaintiff George Vakalis received a significant number of letters by mail from the Defendants as outlined in paragraphs 106 and Counts 2-9 above.

3. The aforesaid use of the mail for the purpose of executing said scheme or artifice to defraud or obtain substantial sums of money and property from the Plaintiff is indictable as Mail Fraud and is in violation of 18 USC Sec. 1341.

4. At all relevant times the Defendants associated in fact as an "enterprise" within the meaning of 18 USC 1961 (4).

5. At all times material hereto the Defendants relating to East Street Mall Associates constituted an "enterprise" within the meaning of 18 USC 1961 (4).

6. At all times relevant hereto the Defendant Country Club

Associates constituted an enterprise within the meaning of 18 USC Sec. 1961 (4).

7. At all times material thereto Interstate Regional Shopping Centers constituted an enterprise within the meaning of 18 USC 1961 (4).

8. At all times material thereto VSR Associates constituted an enterprise within !he meaning of 18 USC 1961 (4).

9. The execution of the scheme or artifice to defraud or obtain substantial sums of money and property from the Plaintiff by mail fraud as defined by 18 USC Sec. 1341 constitutes "Racketeering Activity" under 18 USC Sec. 1961 (1)(B).

10. The Defendant's engaged in a "pattern of Racketeering Activity" pursuant to 18 USC Sec. 1961 (5) since at least one act of mail fraud took place after October 15, 1970, the effective date of RICO and the last act of mail fraud within 10 years after commission of a prior act of racketeering activity.

11. As a result of the aforesaid conduct, the Defendants were employed or associated with an enterprise engaged in, or the activities of which affect interstate commerce and conspired to, or conducted or

participated directly or indirectly in the conduct of such enterprises' affairs through a pattern of racketeering activity in violation of 18 USC Sec. 1962 (c) and (d).

12. As a direct result and proximate result of the aforesaid violations of 18 USC Sec. 1962 the Plaintiff George Vakalis has been injured and irreparably harmed in his business and property consisting in loss of substantial sums of money wrongfully obtained by the Defendants through their racketeering scheme, the exact amount of which is yet unknown to the Plaintiff and he has suffered other incidental and

consequential damages, plus costs and attorney's fees now in excess of $300,000.

13. At all relevant times material hereto as further part of the scheme or artifice to defraud or obtain substantial sums of money from Plaintiff George Vakalis the Defendants took and caused to be taken certain actions which were intended to have the effect of concealing their fraudulent actions, including but not limited to:

a. Hiding sums of monies in East Street Mall Associates and Country Club Associates and

b. Using E. Reule Stoltz, CPA, Spitz, Sullivan, Wachtel &

Falcetta, to withhold and camouflage all financial data from Plaintiff George Vakalis and

c. Using Country Club Associates enterprise as a vehicle for "laundering" a loan and withdrawals of monies illegally,

d. Placing improper mortgages on properties including Country Club Associates.

14. The Plaintiff discovered further the existence and extent of the major scope of the fraudulent scheme during late 1979 and 1980.

15. Wherefore, the Plaintiff George Vakalis prays that:

a. He be awarded treble the damages sustained by him in an amount which is yet unknown from the Defendants.

b. This Court order the Defendants to divest themselves of any interest direct or indirect in Country Club Associates or East Street Mall Associates or any other shopping center in the entity known as Interstate Regional Shopping Center Ltd., whether known or unknown to the Plaintiff at this time.

c. This Court order the dissolution of Country Club and East Street Mall Associates and rescind any agreements between the Plaintiff and the Defendants to relinquish any claims of interest in or to said Country Club Associates and East Street Mall Associates or to include Interstate Regional Shopping Centers, Ltd.

d. The Court order a temporary and permanent injunction enjoining the Defendants from taking further actions to deprive the Plaintiff of

his monies and his property interests in the partnership Country Club Associates and to cause further harm through other actions.

e. The Court appoints a receiver pending final resolution and take control of all accounting for all income therefrom from E. Reule Stoltz, CPA, of Spitz, Sullivan, Wachtel & Falcetta.

f. An order requiring E. Reule Stoltz, Spitz, Sullivan, Wachtel & Falcetta and the Defendants to turn over all books, records, receipts,

accounts, monies or other materials related to the Country Club Associates and East Street Mall Associates partnerships to such receiver or custodian as the Court directs.

g. That pursuant to 18 USC Sec. 1964(a), this Court award the Plaintiff by any other appropriate order other legal and equitable relief as the case may require.

h. Wherefore, the Plaintiff George Vakalis prays that he be awarded treble the damages sustained by him in the amount of $!5,000.000 plus an amount yet unknown

to the Plaintiff in addition to other consequential, Hedonic and physical stress damages and incidental damages plus $35 million in punitive damages plus costs and all attorney's fees.

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George Vakalis
Pro Se